CONSTITUTIONAL HISTORY

OF

BOSTON, MASSACHUSETTS.

AN ESSAY

BY

C. W. ERNST, A. M.,

SECRETARY OF THE MAYOR'S OFFICE, 1889-90.

COLONIAL PERIOD, 1630 TO 1692.

Two things helped to make Boston a great city: Geographical position, and the character of the founders. Without certain natural advantages the founders of Boston would have failed; for even a Puritan cannot militate effectually against nature. Yet the geographical position and the topography of Boston are not without disadvantages. For the city proper, nature provided a peninsula wholly insufficient to meet the wants of a great community. A large part of modern Boston, that is, the peninsula, known to the Fathers as "the neck," stands on ground that was wrested from salt water. But the harbor is magnificent, and was provided by nature. The advantage of the harbor is its proximity to the fisheries,—an advantage generally underrated by modern opinion. But without the fisheries, Boston and Massachusetts could not have lived. The fisheries led directly to commerce; for in agriculture Massachusetts could not rival the colonies further south. This made Boston from the very beginning a commercial city and the chief port of New England. In the days of the Colony and Province, Boston was the chief port on this continent, the most easily reached and the most generally frequented by English shipping. This supremacy was lost, when the empire west of the Hudson river became the

granary of the United States and Europe. For it is easier and cheaper to send grain from the fresh-water lakes to New York than to Boston. Nature provided a way to New York; it barred the way to Boston. And the gain on the voyage to European markets was more than offset by the greater cost of carrying freight from the great wheat farms to Boston. Even steel rails, steam, and the Hoosac tunnel have not destroyed this advantage, as compared with the easier and shorter road to New York. Nor is the port of Boston favorably placed for easy commerce with the South, which produces cotton, or even with Pennsylvania, which supplies our coal.

These comparative disadvantages put Boston to a sharp test, and helped to develop its character. Boston was obliged to work hard, and to mix its toil with farsighted intelligence. The character of Boston is best shown in its institutions, and not the least, perhaps, in the general organization and management of the community. Whoever wishes to understand and appreciate Massachusetts, should read her laws, and ascertain what they effected. Our public laws, after all, are the quintessence of our public life no less than of our joint ambition and public morals. They are the outcome of what the community for the time being wants. To the historian they are the backbone of all researches. The sources for a constitutional history of Boston, therefore, are the town orders and the town records, interpreted by the acts of the town officers, on the one hand, and by the Massachusetts statutes and records, on the other. The first period of Boston, in the history of its constitution the most important, begins with the settlement under the patent, in 1630, and ends with the granting of the Province Charter, in 1691-92. The chief sources are the second and seventh Report of the Boston Record Commissioners (ed. of 1881); the Colonial Laws of Massachusetts, edited, after the editions of 1660 and 1672, by W. H. Whitmore (1889 and 1887); and the Records of the Governor and Company of Massachusetts Bay (1853–4, 5 vols. in six parts.)

The Patent of 1629.

The men and women who founded Boston and Massachusetts came here to improve their condition. But they came as English subjects, not prepared to lose any advantage that relation might afford. The chief attraction in New England were the fisheries, famous along the Atlantic coast of all Europe, and the certainty that the land hunger of the English race could be appeased in the new world. The land laws of

England, and its controversies in church and state, made the new world attractive. But the immediate precedent for the New-England enterprise was the success that had attended the charter of the East-India company. Perhaps it is not unjust to affirm that the charter of 1600, granted by Queen Elizabeth, has made Queen Victoria the Empress of India, with almost three hundred million inhabitants. Greater triumphs might have been achieved, by the successors of Queen Elizabeth, in New England and America. The beginning was auspicious. On the last day in 1600 "The Governor and Company of Merchants of London trading in the East Indies" was incorporated; on March 4, 1628–9, a better charter was given to "The Governor and Company of the Mattachusetts Bay in Newe England." The East-India merchants were given a monopoly of trade; the Massachusetts Company received a monopoly of trade together with a monopoly of land to be held "in free and common Socage," that is, absolutely, the crown reserving only one-fifth of the gold and silver that might be mined in Massachusetts.

It was an interesting fiction that led the crown to give the present United States to enterprising Englishmen, and the latter to treat the patents of James and Charles as a valid title in the land that became New England and America. Yet so strong is the attachment of Americans to the forms of law that the present boundary of Essex county, Massachusetts, to the north was established in the patent of 1629, when Charles I. gave to the Governor and Company of Massachusetts Bay "all those landes and hereditaments whatsoever, which lye and be within the space of three English myles to the northward of the saide river called Monomack, alias Merrymack." The same patent established the Great and General Court which still controls the public affairs of Boston and Massachusetts, although the authors of the patent thought only of a commercial company, with headquarters in England. The patent intended to constitute the Governor and Company of Massachusetts "one body corporate and politique," that is, a corporation that could sue and be sued, "like any other corporation." The corporation was to have very large rights, except those of sovereignty or semi-sovereignty. The corporation was to have a Governor and Deputy Governor, to be elected annually; and a board of Assistants or directors consisting of eighteen persons, who were to hold monthly meetings; while the corporation at large, meeting four times a year, was to consist of freemen formally admitted as such. In the patent a meeting of

the freemen, the Assistants, and the Governor combined, was called the Great and General Court.

Under the patent of 1629 the Governor and Company of Massachusetts were to be exempt from taxes for seven years, as far as New England was concerned, and in the same respect to enjoy free trade for twenty-one years. The emigrants were to remain English subjects, and might admit "any other strangers that will become our [the King's] loving subjects." The Governor and Company were given leave "from tyme to tyme to make, ordeine, and establishe all manner of wholesome and reasonable orders, lawes, statutes, and ordinances, directions and instructions, not contrarie to the lawes of this our realme of England, as well for setling of the formes and ceremonies of government and magistracy fitt and necessary for the said plantation and the inhabitants there;" but all this was to be done "according to the course of other corporations in this our realme of England," showing that the patent expected the Governor and Company, who were made a close corporation, to remain in England. In reality the Governor and Company, together with the patent, were taken to New England; and the commercial corporation acted from the outset as a semi-sovereign commonwealth, or rather as a quasi-autonomous aristocracy. The Governor was the head; the Assistants were his senators; the citizens were the freemen, and all freemen were citizens, with the active and passive right of suffrage, with all that implied. The belief, commonly entertained (Washburn, Judicial History of Massachusetts, 15), that "the government of the company, as established by the charter, was a pure democracy," is not well founded. The early church and the early Commonwealth of Massachusetts were an aristocracy, which prescribed mechanics' wages, did not allow servants to trade, and discriminated against "the poorer sort of the inhabitants."

The Colony.

The king had intended to create another commercial corporation; from the outset it was a municipal corporation, nominally attached to the crown, in fact separated from king and parliament by the Atlantic ocean and a deeper gulf. In time this municipal corporation became a sovereign commonwealth. Land hunger, or love of wealth, scattered the early immigrants over a wide area, and thus led to the founding of numerous neighborhoods, called towns. The accidental right of towns to distribute all land within their boundaries, increased their number

rapidly. As soon as a town was named or otherwise recognized by the General Court, it was deemed to be incorporated, and even a table of precedency among towns was adopted and retained (3 Mass. Records, 2). Boston ranked fourth in this hierarchy, Salem, Charlestown, and Dorchester having precedence. The ruling minds had brought from England certain notions of the realm being subdivided into shires or counties, which consisted of several towns each, beside boroughs or cities. These notions received a new application and development in Massachusetts, where the town obtained some of the rights of the English shire, notably that of direct representation in the General Court. Yet our Massachusetts counties began with a copy of the English lord lieutenant (2 Mass. Records, 42). The Massachusetts town became important at the expense of the county, and in Rhode Island it became the rival of the State itself. Outside of New England the county is the political unit; in New England the town is the chief element to make good citizens and good states. Easily the chief town in New England is Boston, whose rank has never been disputed. Yet the great importance of the New-England town is an accident. A French governor and company of Massachusetts might have begun with the laying out of counties; Governor Winthrop and his company wanted land, but on it they wanted actual settlers with a church and a constable. The church and the constable became the attributes of the New-England town; the county was an afterthought, occasioned by the arrangement of judicatories. When Massachusetts established its first counties, in 1643, there were thirty towns, and these were grouped in four "sheires," namely, Essex, Middlesex, old Norfolk, and Suffolk.

The theocratic element in early New England is easily overrated and misjudged. In those theological days it was easy for the patent of King Charles to profess that the conversion of the Indians to the Christian religion was the principal end of the plantation in New England. The king himself could have added with perfect truth that the chief end of the patent and all it implied or occasioned was the glory of God. But let no one imagine that such utterances meant any disregard of secular interests. Strict Calvinism and sound business go very well together. Sound business and ecclesiastical rivalries do not. For this reason it was sound business and legitimate, not to say necessary, that the founders of Massachusetts, who were also the founders of Boston, insisted upon uniformity in church matters. Had they begun each town with two or three churches, or with none at all, the great experi-

ment they made would have failed. They came here to improve their condition, that is to say, to flourish as they could not in England. They knew what they wanted, and they were right in excluding dissent, until the safety of Massachusetts was well assured. It was better for the dissenter to be exiled than for the infant town and colony to fail, in order that men with a windmill in their heads might be let loose upon a community that had harder work to do than to concoct schemes of reform or discuss rival theologies. The early settlers were strong; but one system of theology was all they could bear. And it was all the infant town and country could bear.

The glory of the Fathers is not their development of theology or theoretical jurisprudence, but the fact that they succeeded in building a great city, a multitude of happy towns, and a great commonwealth in the wilderness which offered few attractions beyond good water, a wholesome climate, free land, and ready access to abundant fisheries. This glory will not diminish upon a comparison of the natural advantages that favor other cities and States in this nation. It is an open question whether the relative sterility of the agricultural lands of Massachusetts was a help or a hindrance in the founding of the State. It compelled hard work, and thus tended to produce a hardy race. It led men to seek wealth by commerce, and thus prevented them from leading the narrower life of prosperous farmers. The very struggle for existence bound the founders more closely together; for partners in business quarrel more easily in days of success than in times of struggle and adversity. The early settler wanted prosperity for himself; but he knew that individual prosperity cannot endure in a loose and ill-governed community. Hence the double endeavor of the founders to build their own fortunes together with the orderly government of the settlement at large. These practical interests were paramount, and left no time for theories. Theories may have suffered; the founders of Massachusetts were not, perhaps, very systematic; but their experiment succeeded, and that under circumstances which would have disheartened almost any other set of men. This is their honor; this honor is among the many inheritances of modern Boston and Massachusetts, that they have prospered in everything that makes life attractive, where a race less sturdy, less ambitious, and less gifted would have failed.

To be sure, the Fathers brought with them the very flower of English civilisation, which had just passed through the Elizabethan

age; they had the English Bible, which gave to New England the purity of its speech. But what was uppermost in the minds of the New-England Puritan was dissent from king and prelate, deep distrust of crown law, and an ardent desire to do better in the new world than seemed possible in the old. In all constitutional questions the New-England fathers were opposed to the dominant doctrines preached and practised in old England. With inexpressible joy they found themselves unopposed, in New England, by royal pretensions and ecclesiastical authority. This relief gave strength to new endeavors; here the freedom-loving Puritan could be his own king, lord, and parliament. What wonder that he clung to such an opportunity with the full tenacity of a tenacious race, kindled by new ambitions. But it is not true that he brought with him a full set of municipal and state institutions. The institutions he left were tottering; royalty and popular self-government were arrayed against each other; and nobody could know what the outcome might be. All that was settled in the minds of the emigrants was that they proposed to establish, if possible, a New England with the tyranny and foolish traditions of old England left out. In reality they had to build anew; their chief advantage was that they were not called upon to tear down and clear the ground before they could begin the new building. But the plan for the new building in America was their own; the plans brought from the old world would not answer. The municipal laws of Elizabeth and Charles were bad; they legalized "select" bodies that made municipal government in England a failure.

Colonial Suffrage.

The patent did not define in detail the grounds on which the corporation of the Governor and Company of Massachusetts might enlarge itself, but authorized the incorporators to admit whom they pleased. The members of the corporation were called freemen. New freemen were admitted by vote. Beside the freemen there were "inhabitants," who were not voters, but owed allegiance to the corporation, or Commonwealth, and in theory to the king. Thus, both in theory and practice, the constitution was aristocratic. The Governor exemplified this trait, which still survives. The corporation was a pure democracy; but the corporation was not the whole enterprise, and from the outset had attached to it many persons who were not freemen. Freemen was a term borrowed from the municipal corporations of England, which

admitted freemen by a vote of the ruling body, itself elected by the freemen. In London a prerequisite of freemen was their admission to a city guild, usually procured by purchase. As the New-England company consisted of Puritan church members, it was natural that they were slow to admit any but church members, except as inhabitants occupying a subordinate position. This prerequisite, that the freemen of Massachusetts must be church members, was relaxed as soon as it was safe to indulge in greater latitude. In defense of the requirement it should not be forgotten that the patent had created a close corporation. The East-India company, not a wholly dissimilar body, was never expected to admit all comers to membership. At any rate the Massachusetts company acted lawfully and from legitimate self-interest. It did not set out to be an asylum for the refugees of mankind.

The opinion that church membership conferred the rights of a freeman, is not well founded. It required a formal vote of freemen, or their authorized representatives, to admit new freemen. In 1641 this right was conferred upon courts where at least two magistrates were present; and they could admit as freemen such church members only as were "fit," the magistrates deciding what constituted fitness. The provision was distinctly aristocratic, and was administered in that spirit. In 1664 the right of admitting freemen reverted to the General Court, which required applicants to be Englishmen, twenty-four years of age or more, "settled inhabitants in this jurisdiction," householders, taxpayers in their own name, "orthodox in religion," and not vicious in their lives; or, "that they are in full communion with some church amongst us." In English municipal corporations the rights of a freeman could be acquired by marriage with the widow or daughter of a freeman; this law was never adopted in New England, possibly because the daughters of New England usually declined to marry men not freemen in their own right. The religious test of freemen disappeared with the patent, the Province charter of 1691 establishing other requirements than those deemed prudent in Colony days. The sterner requirements of the first comers, who laid the foundation and were responsible for its strength, had been complied with, and Massachusetts was the result.

The right of suffrage in America is municipal rather than imperial. In Massachusetts, where the supreme authority—the General Court—has always been jealous of its prerogative, a municipal character of the

suffrage has never been wholly avoided. When the "Company" established by the patent became too numerous for all freemen to take part in the Great and General Court, each Town was invited to send deputies. This arrangement began as early as 1634 (1 Mass. Records, 118), and added to the dignity of towns, all being treated alike. When the General Court resumed the right of conferring the freedom of the colony, it required applicants to present proper credentials from the clergy as to character, and from the other town officers as to secular qualifications, like domicile and freehold. But domicile could not be acquired without the formal consent of the selectmen, thus giving them, at least indirectly, great power over the admission of freemen. Applicants for the freedom of the colony had to acquire also a freehold before they could be considered, and the freehold was likewise conferred by the towns. Even the temporary presence of strangers required the consent of the selectmen. Admission as an inhabitant and as a freeman was thus carefully guarded, and it was guarded through the towns and their selectmen. The Boston Town Records show how carefully this was done. Anybody was free to go, but not to come (Col. Laws, 1660, ed. Whitmore, 50, 2). It was the Town through which men entered the "Company" of Massachusetts, and through which they exercised their rights as freemen.

The number of freemen appears to have been from one-twentieth to one-tenth of the population. In 1675 Boston was estimated to have a population of about 4,000; in 1679, when it demanded more deputies to represent it in the General Court, a Town Meeting asked indignantly: "Shall twenty freemen [rural towns of twenty freemen were entitled to two deputies, the maximum number of any town] have equal privilege with our great Town, which consists of near twenty times twenty freemen" (7 Boston Rec. Comm., 134). A full list of all freemen is given in the Massachusetts Records (ed. Shurtleff, 6 vols., 4to, 1853-54), and to every living freeman it may be safe to count about fifteen "inhabitants" or persons. These latter were so important that at an early day they received privileges of value. In 1641 the General Court provided that "every man, whether inhabitant or foreigner, free[man] or not free[man], shall have liberty to come to any public court, council or Town Meeting, and either by speech or writing to move any lawful, seasonable or material question, or to present any necessary motion, complaint, petition, bill, or information whereof that meeting has proper cognizance, so it be done in convenient time, due order and re-

spective [respectful] manner" (Mass. Col. Laws, 1660, ed. Whitmore, 50). The right to vote, of course, was reserved to the freemen. The General Court was always chosen by freemen only. But the rest of the community was carefully and prudently deprived of every pretext for banding together as against the Town or Colony. The Town Meeting was the public platform where anything could be ventilated that touched the community. This same right is now exercised by the city council, the direct successor and heir of the historic town meeting.

The Massachusetts Town.

A kindly star stood over the birth of the Massachusetts town. The Massachusetts town was not created, like a city, by the General Court, but was born at a happy moment. The supreme authority was glad to acknowledge the town, and to help in making it an instrument for good, both to the town itself and to the country. Our counties are artificial corporations, and have never lost their artificial character; the town was the immediate neighborhood of men and women that had one mind, one church, and one common endeavor. A General Court not composed of the Massachusetts Company might have laid out towns and regulated their settlement; the General Court of Massachusetts recognized what the early founders of towns did for themselves, and added its approval and aid. The first comers of the Massachusetts Company settled where they thought best, and always made a church the centre of their establishment. A settlement of ten freemen might send a deputy to the General Court, and every town was free to distribute the town lands, the General Court not being able to make allotments throughout the Colony. It tried to establish boundaries between towns, but acted only in appealed cases. So it fell to many of the Company to become founders of towns as well as of the commonwealth; and to each town fell the inestimable privilege of allotting its forests and fields to the freemen or those fit for freedom. At the same time each town was a church, and every settlement of fifty householders had a school. A happier beginning of towns the world had not seen. Nor has the star set that stood over the infant Boston and sister towns.

As early as 1635 the General Court gave the towns of Massachusetts a general charter: "The freemen of every town, or the major part of them, shall only [exclusively] have power to dispose of their own lands and woods, with all the privileges and appurtenances of the said towns, to grant lots, and make such orders as may concern the well ordering

of their own towns, not repugnant to the laws and orders here established by the General Court; as also to lay mulcts and penalties for the breach of these orders, and to levy and distrain the same, not exceeding the sum of twenty shillings; also, to choose their own particular officers" (1 Mass. Rec., 172). Under this wise law, most of the towns were founded without the special aid of the colony. Groton, one of the most interesting of all towns, was established under a special grant from the General Court (3 Mass. Rec., 388), as were others. The Groton petitioners were required to look out "for the speedy procuring of a godly minister among them," but however essential the ministry, and however close the union of church and town, the civil authority was distinctly superior to the spiritual powers. New churches required the approval of three magistrates and the ministers directly interested in a possible rival; and the Body of Liberties, about 1641, contemplated that no church censure should affect the civil standing or office of the offender (l. c., 47). Every church was a pure democracy, entirely independent, and the equal of every other church, yet subject to the civil power, the supremacy of which was in fact never questioned, at least not with impunity. When for any reason, spiritual or litigious, a new church was to be formed by seceding members, the consent of the town meeting and the County court was required, under severe penalties (see the order of 1679 in 5 Mass. Rec., 213). The power of the clergy was moral and intellectual, and it was gladly recognized, in its proper exercise, by the people. It was the intellectual leaven for the entire community, doubly useful in an aristocratic society. The church is democratic. Society is not.

The Town Officers.

The principal officer in each town, at the beginning, was the constable. The constable was an inheritance from England; the selectman was a product of the Massachusetts town and its peculiar necessities. The term "selectman" does not appear in the Body of Liberties, 1641, while the constable was a familiar figure from the very outset. He was essentially a town officer, and the original collector of taxes. In 1638–9 a general oath was prescribed, the constable, who was chosen by the town for one year, swearing that he would "carefully intend the preservation of the peace, the discovery and preventing all attempts against the same," and that he would duly execute all warrants issued by lawful authority (1 Mass. Records, 252). He was the chief

executive officer of the town in all police matters; he was to "whip or punish any to be punished by order of authority," to arrest offenders, to supervise the licensed sellers of beer or wine, to provide standard weights and measures, to serve as election officer, to levy all fines, to employ night watchmen, to serve as coroner, and not to refuse the office of constable "on penalty of five pounds, and, if in Boston, ten pounds." Every town was required to have at least two constables. It was not an accident that the duties of constables were the first to be codified by the General Court (see the code in 4 Mass. Records, part 1, 324–7). His badge of office was "a black staff, of five foot long, tipped at the upper end about five inches with brass" (Col. Laws, 1660, ed. Whitmore, 140). In short, during the Colony period the constable was to Boston all that is now performed by the constables of the City, the sheriff of Suffolk County, and the Board of Police. History tells us that in previous centuries the office of constable, both in France and England, was truly exalted. In Boston and Massachusetts a mere shadow remains. From the beginning it was the least popular of all offices.

While the constables of Boston were town officers by election, and the usual medium of communication between the public authorities and the inhabitant, they were virtually state officers executing state law. The selectmen were primarily and essentially town officers, dealing with town affairs, and but indirectly concerned in the execution of state laws. The name "selectmen" originated in Charlestown. The Boston Town Records first used it on November 27, 1643 (2 Boston Record Comm., 76). Their first election by that name took place in Boston on December 10, 1645; when they were chosen also for the first time to serve a whole year (l. c., 86), the previous elections having been for six months. The first entry in the Town Records (l. c., 2) calls them "the 10 to manage the affaires of the towne." They were called, also, overseers of the town's occasions, townsmen, or deputies. The Body of Liberties, 74, called them "select persons," in 1641, and limited their number to nine. A year later the General Court ordered "that the selected townes men have power to lay out particular and private wayes concerning their owne towne onely," damage, if any, to be paid by the said "townes men," or, in case this was not satisfactory, "then by 2 chosen by the townesmen & two by the party" (2 Mass. Records, 4). The Colony Laws of 1660 (ed. Whitmore, 157) changed "the selected townes men" to "the Select Townes-men," and "the said

townes men " to "the sayd Select men," a form apparently preferred by the general laws, while the Boston men soon spoke of "selectmen" and wrote as they spoke. It was the special business of the selectmen to deal with the "prudential" affairs of the town. The constable carried out orders, both general and special; the selectmen gave orders as well. The constable was bound by the letter of the law; the selectman was to consult prudence and equity as well as the letter of the law.

The Boston city charter (Acts of 1854, chapter 448, section 2) vests in the City Government "the administration of all the fiscal, prudential, and municipal concerns of said city." The same term "prudential" is found in the Body of Liberties, 66: "The freemen of every township shall have power to make such by-laws and constitutions as may concern the welfare of their town, provided they be not of a criminal, but only of a prudential nature, and that their penalties exceed not 20 shillings for one offense" (Col. Laws, 1660, ed. Whitmore, 47). In 1642 the General Court used the same term in alluding to "the chosen men" or selectmen of every town, and described them as "appointed for managing the prudential affairs of the same" (2 Mass. Records, 6). In 1646 the following was called a prudential law: "Every township, or such as are deputed to order the prudential affairs thereof, shall have power to present to the Quarter Court all idle and unprofitable persons, and all children who are not diligently employed by their parents" (3 Mass. Rec., 102). The term passed into the general laws of the Colony, the Province, and the Commonwealth, and still survives. The Colony Laws of 1660 (ed. Whitmore, 195–6) authorize towns to "make such laws and constitutions as may concern the welfare of their town, provided they be not of a criminal, but of a prudential nature, and that their penalties exceed not twenty shillings for one offense, and that they be not repugnant to the public laws and orders of the country;" also, "to choose yearly, or for less time, a convenient number of fit men to order the planting and prudential affairs of their towns, according to instruction given them in writing." The term appears to be the coinage of Nathaniel Ward, the "Simple Cobler of Agawam," and was first used as the opposite of "criminal." Criminal and other matters reserved for state jurisdiction were not touched by the selectman, who was confined to town affairs, many of which were not provided for in the bylaws or orders, yet called for action. These matters were to be prudently dealt with by the selectmen, and came to be called the prudentials of the town. When the law was silent, and

the town meeting had not spoken, the selectmen were yet bound to act where the welfare of the town was concerned; they administered also the bylaws of the town and the general laws, except those relating to law courts, crimes, and state affairs. These municipal interests were aptly called prudential affairs, as distinct from affairs of the commonwealth, on the one hand, and from those confided to constables, on the other. The Massachusetts towns still have the right to make "such necessary orders and by-laws, not repugnant to law, as they may judge most conducive to their welfare . . for directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof" (Mass. Publ. Stat., ch. 27, sec. 15). The terms "selectman" and "prudential" mark the transition from English to Massachusetts law, and show how little our towns, their prudential affairs and selectmen, owe to English precedents. A new thing usually finds for itself a new name. Yet the men who managed English municipal corporations in the time of Elizabeth and James I. were usually called "select" bodies, and the founders of Massachusetts knew that term.

In the beginning none but freemen could serve as constables, selectmen, or other town officers. The order of the General Court, passed on March 3, 1635–6 (1 Mass. Records, 172), is sufficient evidence on this point. In 1647 "inhabitants" who were not freemen, but had taken the oath of allegiance, and were at least twenty-four years of age, were made eligible for town offices, and received the right to vote, but a majority of the selectmen and of all companies must be freemen (2 Mass. Records, 197). Voting inhabitants were allowed, also, to take part in the distribution of lands, which was the chief business of towns (Col. Laws, 1660, ed. Whitmore, 195); but later on, apparently in 1658, these inhabitants, not freemen, were required in addition to be householders and rated "at twenty pound estate in a single country rate" (l. c., 196). In 1670 this property qualification of voting inhabitants not freemen was raised to eighty pounds (Col. Laws, 1672, ed. Whitmore, 148). In 1680–1 the property requirement was abolished, and persons who had served as town officers were given the municipal suffrage during life (5 Mass. Records, 306). The Province charter of 1691 did away with the patent and its freemen, and gave the suffrage to freeholders and other inhabitants with a property qualification. Boston had meanwhile become a prosperous town of some 5,000 inhabitants, and the capital of a happy commonwealth. The foundation of future greatness had been laid so well that it still lasts.

It is this which entitles the colonial period of our municipal institutions to peculiar respect. To belittle those days, seems ungracious and unfilial; to measure them by the ideas and achievements of our time, seems to be little less than impertinent. Noble minds will be glad to find in the institutions of our great city the fruit which it took centuries to bring forth, and to remember with grateful regard the early husbandman that cleared the ground and planted the seed, in order that future generations might be happy in their great state and splendid city. If the founders failed in one thing more than another it was in regard to streets and highways. The land hunger of the founders led them into serious errors. Towns were settled at pleasure, and each town distributed its lands indiscriminately. The highways between towns, and the streets in towns, were an afterthought. In consequence Boston suffers today, though millions have been spent to correct the error of the past. This error was fundamental. Each town was required to lay out its own streets, and in 1634–5 the Court of Assistants was required to lay out the highways between towns. Of course, they failed; and then the towns were required to lay out and construct country highways. In 1642 the selectmen were authorized to lay out all town ways; the laying out of highways between towns was to be done upon an appeal to the county courts. This did not answer, and as early as 1649 the General Court took a hand in a special order (2 Mass. Records, 271). As the expense of highways was borne by each town, the road making was bad, the planning worse. The cost of the town ways was borne by abuttors, the result being narrow and inconvenient alleys, not deserving the name of streets.

In 1641, upon a threat from the General Court, the highways in Boston had the benefit of every team in town for one day; the "richer sort of inhabitants" were to supply one man for three days, the "men of middle estate" for two days, "the poorer sort" for one day (2 Bost. Record Comm., 62). In 1650 the repair of the highway to Roxbury was farmed out for seven years, at £15 a year, "to be sufficient for carte and horse" (l. c., 99). And as late as 1700 a happy land owner reported to the town that he could not get to his land, there being no way. The town acted upon the old tradition that "every allotment should have a way laid out to it by a committee chosen and authorized by the town for that purpose" (7 l. c., 240, 242). The towns were first settled, and then a highway found to other towns; in the towns the lands were distributed first, and the ways to them laid out after-

wards. Penn and Pennsylvania showed how to do these things better, the roads and ways being laid out first, and the lands occupied afterwards. Massachusetts was less wise, partly perhaps because the soil was naturally adapted to good roads, and for that reason permitted neglect; but the consequences have been serious, in Boston they continue to be embarrassing. At an early day Massachusetts shipping found its way wherever there was a promise of profit; as a road builder the colony was a failure. It seemed wholly indifferent to a highway that might have bound Plymouth more closely to Boston, or Connecticut more closely to Massachusetts. Indeed, the road-building age came very much later, and the great economic and moral value of country roads and easy commerce between towns is still underrated. Yet the wealth of a community depends largely on local traffic.

Town vs. County.

The Massachusetts Act of 1854, chapter 448, popularly known as the City charter, prescribes that "the City Council [of Boston] . . may choose a register of deeds whenever the City shall be one county." This clause is still valid, except that the register of deeds would be appointed by the mayor, and confirmed by the board of aldermen, were Boston and Suffolk County now united in one. The charter of 1854 merely repeats the language of the original City charter, which was signed in 1822. And the expectation so expressed was uttered as early as 1677, when the Town of Boston instructed its deputies in the General Court to see that Boston might be a corporation, a county as well as a town. A similar petition, "in the name & in the behalf of the towne of Boston," was discussed by the General Court in 1650, when the proposition was rather encouraged, provided a suitable plan were presented in terms. The ideal in the minds of both Boston and the General Court was to make the capital of Massachusetts what London was to England. This was not realised, though the Boston City Government of today has the power of County Commissioners, including that of laying County taxes, in consideration of which right Chelsea, Revere, and Winthrop, though in Suffolk County, do not pay County taxes and have no County property. Repeated efforts have been made to merge the whole county in Boston, but they have failed. Yet the interesting fact remains that Boston, always ambitious, has generally desired to be more than part of a county, and less than subject to County as well as State authority. Unconsciously, perhaps, the Boston of 1893, in aspiring to metropolitan

grandeur, remembers that from the beginning Boston was paramount in Suffolk County. All that is now known as Suffolk County, except Charlestown, Roxbury, and Dorchester with South Boston, was a part of Boston from 1630, or very early days, to 1739, when Chelsea was set off. But Suffolk County, in the same year, included Roxbury and Dorchester, Hingham and Hull, the whole of the modern Norfolk County, and until 1731 had included a good part of Worcester County, beside Woodstock, now in Connecticut.

It was Boston jealousy of County authority that led to the establishment of the City as a corporation. As soon as Suffolk County was established, in 1643, it was given a County Court, and this Court was given jurisdiction in many matters that concerned the Town of Boston very closely. The County Court had charge of the house of correction, and appointed its master; it performed the judicial duties now vested in the Overseers of the Poor and the Commissioners of Public Institutions; it granted liquor licenses; and was the executive body superior to the Selectmen. As the County Court met but four times a year, one can imagine the difficulties that would arise in the administration of many Town affairs. This difficulty increased when the Colony became a Province; for as early as 1692 (1 Prov. Laws, ed. Goodell, 66) the General Court provided that all orders and by-laws of towns should be presented to the justices in quarter sessions, being the previous county courts, and should not be binding until approved by said courts, the judges of these courts in Suffolk County being appointed by the Governor, with the advice and consent of the Council. This law stood until 1822. The last edition of "The By-Laws and Orders of the Town of Boston," issued in 1818, carries on its very title-page the statement that the ordinances of the Town are "duly approved by the Court of Sessions." Such an arrangement led to unavoidable delays and uncertainties,—the very thing to be avoided in the administration of affairs, where prompt action is the condition of success and public approval.

To put an end to these delays and uncertainties in administration, the Town of Boston became a City, and the General Court passed the famous Act on the Administration of Justice within the County of Suffolk, section 11 of this Act, which was signed on February 23, 1822, providing that "The Court of Sessions, within and for the County of Suffolk, be and the same is hereby abolished: And the Mayor and Aldermen of the City of Boston, for the time being, shall have all the

powers, and perform all the duties, which before, and until the passing of this Act, were had and performed by the Court of Sessions, excepting as otherwise provided for." In other words, the executive authority of the Town of Boston, as far as vested in the cumbersome Court of Sessions, which met four times a year, was transferred to the Mayor and Board of Aldermen, who were prepared to act every day in the year. For the first time in its history of nearly two centuries the municipal government of Boston received in part the benefit of the great principle laid down in the Constitution of the Commonwealth (Declaration of Rights, art. XXX): "The legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them."

The sequel showed that it would have been better, had this distribution of power been fully applied to the government of Boston. The memorable Acts of 1822 separated the judiciary from the legislative and executive branches of the municipal government, and so made a city government possible. The City Council, and especially the Board of Aldermen, were not fully shorn of executive power until 1885. It took two hundred and fifty years to apply to Boston the rule laid down by John Locke that administrative, legislative and judicial duties, or any two of them, should never be exercised by one body, if government is to be free and pure. The same principle had been expounded nearer home by the immortal John Adams. Yet what is so simple in principle, is rarely and reluctantly applied to the government of a great city, as if a great city could be well governed on principles different from those applied to a country that means to be both great and free. The history of Boston as a municipality is an interesting and deeply instructive illustration of the same principle of government which Montesquieu considered to be the chief glory of the English constitution,—a principle still further developed in the government of the United States. Under this principle the law-making and money-appropriating power, the executive, and the administration of reasonable justice, are a check upon each other, yet bound to cooperate, in order that the citizen may derive from government the highest good, while bearing the least burden compatible with the legitimate interests of the body politic, outside of which there is neither citizenship nor, perhaps, property, neither peace nor public morality. Government is constituted in order that man may

be as free, as powerful, and as ambitious as the government of which he forms part.

Boston the Capital.

The seventeenth day of September, 1630, is commonly mentioned as the birthday of Boston, when it was first named by the Governor and Company of Massachusetts Bay, under the patent of 1629. On the 19th of October, 1630, the first General Court on this side of the Atlantic was held in Boston. It has been the capital of Massachusetts since then, not merely in name and by law, but in feeling and fact. Until 1798 its town house was the capitol of the State, and from the beginning the most eminent men of the commonwealth have been glad, also, to serve the city or town. The Town Records preserved to us begin on September 1, 1634, with the name of Governor Winthrop, who served as one of the Boston selectmen, and the first entry is "only a declaration of the Common Lawe." The General Court, later on, resolved formally that the Governor "make his abode in Boston . . that so he may be the more serviceable to the country in generall" (3 Mass. Records, 374). With few exceptions the General Court has always met in Boston, at the beginning as the guest of the First Church, in which town meetings were held as well, the church and the town being one. During the Province period and the second half of the Colony, as soon as Boston had a town house, the General Court was the guest and friendly partner of the town. Even since Boston became a city, members of Congress were glad to serve it as city officers. This municipal spirit was marked from the outset.

When the first town house was built, on the spot where the Old State House now stands, at the head of State street, in the place previously occupied as a market, the General Court contributed "Boston's proportion of one single country rate,"—one penny in the pound of assessed valuation,—on condition that the said house should be forever free for the keeping of all Courts, the General Court included (4 Mass. Records, part I, 327). When repairs were ordered in 1667, the selectmen of Boston could charge half the cost to the Commonwealth, one-quarter to the County, and the remainder to the town of Boston (4 Mass. Rec., part II, 351). A similar arrangement was had in 1671 (l. c., 486). This illustrates the very friendly relations between Boston and Massachusetts. Yet the Commonwealth has always guarded its supremacy. Only in 1681 Boston received permission to send three deputies to the

General Court, while every other town sent two (5 Mass. Records, 305). Again and again Boston asked to be made a city, and was always refused. It asked that at least the county and Boston be made one; instead the county authorities were given the right to hear cases appealed from the Boston selectmen or town meeting; but this cruelty was inflicted by the Province, in 1692 (1 Province Laws, ed. Goodell, 66, 136). Professional lawyers, in particular, have not been the firmest friends of city charters in Massachusetts, and our legislation has been kinder to towns than to cities. Indirectly the great ambition of Boston may have strengthened this strange sentiment, which treats a town as an ideal government, and a city as a government that needs watching.

Boston as a town or city has always taken a lively interest and an active part in larger affairs. Here is an entry from the Town Records of January 21, 1684: "At a meeting of the freemen of this town, upon lawful warning. Upon reading and publishing his majesty's declaration, dated 26th of July, 1683, relating to the Quo Warranto issued out against the charter and privileges claimed by the Governor and Company of the Massachusetts Bay in New England: It being put to the vote, Whether the Freemen were minded that the General Court should make a full submission and entire resignation of our charter and privileges therein granted, to his majesty's pleasure, as intimated in the said declaration now read: The question was resolved in the negative, *nemine contradicente*" (7 Boston Rec. Comm., 164). The same proud spirit induced the town as early as 1659 to separate town and general elections. "It being judged convenient that the freemen should meet distinctly as to what concerns them, it is therefore ordered that the selectmen shall for the future appoint the times of meeting for the freemen distinct from the general town's meetings" (2 Boston Record Comm., 149). The freemen alone voted for the General Court; but a more liberal suffrage in town affairs had prevailed since 1647. Since 1660 the municipal and general elections in Boston have been held on separate days, and the separation is wise, as it prevents the general election from being influenced by the municipal contest. Voters usually feel stronger on what they know than on what they believe; and the financial interests involved in a Boston city election are at least fourfold the sums expended by Massachusetts in the course of a year. It was convenience and pride that led Boston, in 1659, to separate its town and general elections.

Boston Selectmen.

The character of the Boston selectmen is significant, and shows that municipal pride is always conservative. First in the list is the incomparable John Winthrop; his great opponent, Harry Vane, did not serve, though he was made governor. But the incorruptible Bellingham, who served thirteen years as Deputy Governor, and ten as governor, was eight times chosen selectman. He was the last survivor of the original patentees named in the charter of 1629. Governor Leverett was chosen selectman in 1651; he was justly popular for his military character, but was defeated for the governorship when he accepted the knighthood from Charles II. His father, Thomas Leverett, had served as selectman before him. John Coggan was elected, although he practised as an attorney. Of Hutchinsons there were, in Colony days, William, Edward, and Elisha, to be succeeded, during the Province period, by the elder Thomas, William, and Thomas, the governor, thus beginning with the husband of Mistress Ann, and ending with the remarkable historian who now receives tardy justice. Elisha Hutchinson was joined by Elisha Cooke, another selectman, in making a desperate defense of the original patent. Among the great families of Massachusetts the Hutchinsons should be named with the Winthrops and the Quincys. William Coddington, twice chosen selectman, was treasurer of the colony, founded the colony on Rhode Island, and served it as governor. William Hibbens served for years as selectman and assistant. James Penn was the first marshal-general of the colony; William Tyng was treasurer of the colony, and nine times chosen selectman. John Hull filled the same positions, and is the father of the Massachusetts coinage. Thomas Savage was a selectman, and six times speaker of the house of deputies. Thomas Clarke was thrice selectman, and five times speaker. Robert Keayne, finally, was the father of the first town house in Boston, of the artillery company, and of the longest will ever filed in Massachusetts. One is tempted to think that Massachusetts was founded by the best Englishmen when England was at her best; that Boston attracted what was best in Massachusetts; and that the best men of Boston served as selectmen. Most of the selectmen were merchants; in 1669 all were. It would have been wise to give to such a town the self-government of a city; but it was not to be.

The Boston selectmen acted with much dignity, and soon outshone all other local officers. As early as 1637 the town voted to pay all the charges at the selectmen's meetings (2 Boston Record Comm., 20); in

1641 the constables, who collected the tax, were ordered to "pay unto Robert Turner for diet for the townsmen [the selectmen] £2 18*s.*" (l. c., 63); shortly after the order was to "pay unto Robt. Turner for dyet, beere, and fire for the select men, 18*s.*" (l. c., 68). This sort of expense continued until 1884, when the "act to improve the civil service of the Commonwealth and the cities thereof" provided that no city in the State should pay any bill incurred for "wines, liquors, or cigars," and that refreshments for a member of the city government should not exceed a dollar a day, if paid by the city (Acts of 1884, ch. 320, sec. 13). The selectmen imposed fines long before the law gave them authority to do so (l. c., 2), and notified "all that have businesses for the townsmen's meeting to bring them in to Mr. Leveritt, Mr. Willyam Ting, or to Jacob Elyott, before the town's meetings" (l. c., 46). A surprise of the selectmen by demagogues was thus prevented. As early as 1651 the Selectmen issued an order "that if any Chimney be on fyer, so as to flame out of the top thereof, the Partie in whose possession the Chimney is shall pay to the Tresurer of the Towne, for the Towne use, tenn shillings" (2 Bost. Rec. Comm., 106). This ordinance was retained in the code of 1702, the first digest of the Town bylaws in print, and is an interesting illustration of the legislative power exercised by the selectmen. This power was not expressly conferred by the town, but was implied. It was exercised repeatedly (l. c., 98, 104, 116, 145–7), and a large part of the first town code, printed in 1702, consisted of bylaws made by the selectmen. The General Court never favored such power, but hard necessity compelled the General Court of 1847 to restore to "the mayor and aldermen of any city in this commonwealth" the exercise of a certain legislative power which the Boston selectmen under the colony had exercised very freely. The Regulation of the aldermen requiring a driver to remain with his team (Rev. Regul. of 1892, ch. 6, sec. 14) has the force of a city ordinance. This power was conferred by the Act of April 23, 1847. But it was exercised by the selectmen on June 4, 1658, and was accepted as good law by the Court of Sessions in 1701. In a word, the colonial selectmen exercised nearly all functions that a town meeting could exercise; but they acted so prudently as never to lose the support of the town. The town meeting as a great political engine, not only in municipal affairs, was the product of the provincial period. There was no room for the town demagogue under the colony, for the reason that the town had entire confidence in its selectmen and their power to regulate all prudentials.

In 1659 the town ordered "that there shall be a moderator chosen annually, to regulate publick towne meetings," the first moderator so chosen being William Davis (l. c., 152), who served as selectman for fifteen years, being elected as early as 1647, and for the last time in 1675. The dignity of being permanent moderator of the town meeting fell to Thomas Savage, deputy, speaker, assistant, commissioner for Boston, captain, major, and commander in chief of all the forces against the Indian enemy. The office of moderator was of Massachusetts origin, and is first mentioned in the Body of Liberties, 71: "The Governor shall have a casting voice whensoever an Equi vote shall fall out in the Court of Assistants, or general assembly, So shall the presedent or moderator have in all Civil Courts or Assemblies" (Col. Laws, 1660, ed. Whitmore, 49). The law of Massachusetts still prescribes that "At every town-meeting, except for the election of national, state, district, and county officers, a moderator shall be first chosen" (Public Statutes, 1882, ch. 27, sec. 58), and great power is vested in him. The early law of Massachusetts made his duty equal to his power (Col. Laws, 1660, ed. Whitmore, 45, 49, 143, 198. St. 1893, ch. 417, sec. 263–5). The term moderator was borrowed from the English university debates; thence it passed to the ecclesiastical meetings of the English dissenters, and to New England.

Colonial Boston.

In Colony days Boston was bounded in the north as Suffolk County is now; Lynn was the boundary to the north, Charlestown to the northwest, but until 1649 Charlestown included Malden with the present municipalities of Everett and Somerville. In the south Boston reached down to Plymouth colony, and still shares its jurisdiction over Hull and a part of Hingham with Plymouth county (Publ. Stat., 1882, ch. 22, sec. 12). But Dorchester and Roxbury were independent towns, like Boston; and Roxbury was not merged in Boston until 1868, Dorchester until 1870, Charlestown until 1874 (Boston Municipal Register, 1890, p. 6). Until 1804 South Boston was a part of Dorchester. In Colony times, Cambridge included Newton, Needham was a part of Dedham, Milton was a part of Dorchester, but Braintree and Quincy were originally owned in part by Boston, which reached in the southwest to Weymouth (1 Mass. Records, 217, 291). This ceased in 1640. Brookline, on the other hand, was a part of Boston until 1705, Chelsea, which included Revere and Winthrop, until 1739. Boston clearly

began with metropolitan proportions, but began to lose in 1640, and to regain in 1804. Boston used to choose constables and surveyors of highways for both Muddy River (Brookline) and Rumney Marsh (Chelsea); and continued to do so after President Dudley and his Council had made Muddy River nominally independent of Boston (7 Bost. Rec. Comm., 190, 200). The President and Council ordered in 1686 "that henceforth the said hamlet of Muddie River be free from towne rates to the town of Boston;" but the latter voted at the annual town meeting in 1689–90 "that Muddy river inhabitants are not discharged from Boston, to be a hamlet by themselves, but stand related to Boston as they were before the year 1686." After 1640, then, colonial Boston included the peninsula up to the Roxbury line; also East Boston, Breed's Island, the islands in the harbor proper, Chelsea, Revere, Winthrop, and Brookline. The Boston commissioners, a municipal court established in 1651, were given jurisdiction over the larger Boston in 1674 (Col. Laws, 1672, ed. Whitmore, 21, 217).

The principal business in early Boston was to get possession of land. The earliest records, if any, of the distribution are not extant. The Town Records begin with September 1, 1634, and abound in allusions to the distribution of greater Boston, the peninsula being mostly occupied or allotted by that time. In the year following "it was by general consent agreed upon for the laying out of great allotments unto the then inhabitants" (2 Boston Rec. Comm., 22, 6). Under this authority, either implied or assumed, the selectmen entered on the Town Records allotments made at Muddy River (Brookline), Rumney Marsh (Chelsea), and Pullen Point (Winthrop), and amounting to about five thousand acres. At Brookline, Thomas Leverett and Thomas Oliver received 115 acres each, William Colburn 160; they were selectmen. John Cotton, the minister, received 250 acres; the poorer sort, as they were called, at the rate of four or five acres per head (l. c., 6), the table of distribution thus giving a clear account of the size of families, except that the leading men received land in keeping with their social position. The Book of Possessions, being part 2 of the Boston Record Commissioners' second volume, undertakes to show how the peninsula was divided among the early settlers. These accounts, reduced to a map by Mr. George Lamb, are the delight and despair of the antiquary. They show how soon the Boston Puritan found his boundaries too narrow. Breed's Island was annexed to Boston in 1634, or three years before East Boston. As soon as it became Boston property, the felling

of trees in the island was forbidden, and the island distributed among "the inhabitants and freemen of this town, according to the number of names in every family" (l. c., 2). Truly, the early comers were a great land company. In Boston the work of the land company was nominally done by allotters; the real allotters were the selectmen.

The allotters or selectmen used great skill in the distribution of estates; but for this the new office would have been abolished. But it grew steadily, and still enjoys many prescriptive rights, though men of the law tell us that a town or city has no powers, save those conferred by the General Court. Yet the Boston selectmen, who had divided a principality, were told by the town meeting of 1641 that "there shall be no more lands granted unto any inhabitants that shall hereafter be admitted into the town, unless it be at a general town's meeting" (2 Bost. Rec. Comm., 65). But inhabitants were admitted by the selectmen, and the freemen of 1641–2 continued to distribute land "amongst the present inhabitants," great latitude being allowed in the distribution (l. c., 67). The final order for distributing what land remained, was given by the town on March 4, 1641–2 (l. c., 67). In the most critical trials the new institution of selectmen was found equal to all demands. Less competent men distributing the vast estate of a great town and future city, might have come to blows; a less orderly community than the Puritans of Boston might have resorted to crime. The early history of Boston is not the least honorable, and, perhaps, the most instructive. The town established itself before the General Court gave a general charter; indeed, this general charter, greatly to be honored, simply gave the approval of law to what the people had worked out for themselves with extraordinary skill and foresight. In 1651 the owners of land on the peninsula were allowed to buy and sell it at pleasure, and the year following the General Court passed the order that all sales of real property must be effected by written deeds, provided the deeds were duly acknowledged and recorded (3 Mass. Rec., 280). But the town of Boston ordered that "no inhabitant shall let any house, housing or land to any Forriner without the consent of the selectmen" (2 Bost. Rec. Comm., 103). An order like this may look timid; it was needed, and it strengthened the attachment of the founders to their new home.

Streets and Ways.

How did they appoint this home? The founders attempted to draw a line between public highways and the town ways. After Boston had distributed its lands, both in the town proper and in the country, the General Court declared "that the selected towne's men have power to lay out particular and private ways concerning their towne onely" (2 Mass. Rec., 4), the result being that the town ways in Boston were as badly planned and built as the public highways from town to town. The selectmen would have alienated the town, and imperilled their very existence, had they systematically ordered streets and caused them to be properly built. First the settlers received the land they wanted; then the town decided that "every one shall have a sufficient way unto his allotment of ground, wherever it be, and that the inhabitants of the towne shall have libertie to appoint men for the setting of them out, as need shall require, and the same course to be taken for all comon high ways, both for the towne and countrie" (2 Bost. Rec. Comm., 7). Surveyors of highways, on the other hand, were authorized by the General Court as early as 1635–6 (1 Mass. Rec., 172), but were not appointed in Boston until later. In 1637 special surveyors were chosen "for the high wayes towards Roxbury and . . to the Milne" (2 Bost. Rec. Comm., 16), though the office is mentioned earlier (l. c., 10); general surveyors were apparently first chosen in 1638 (l. c., 35). Throughout the days of the Colony surveyors and selectmen were kept apart, the result being confusion, not only as to highways and town ways, their laying out and construction, but also as to the very title in these thoroughfares. This confusion continues to the present time, when the city has a board of survey as well as a board of street commissioners, beside private owners of land, to lay out streets and highways. This confusion was complete by 1640, or as early as the town had distributed all the land within its reach.

On the peninsula an interesting attempt was made to set houses back from the street lines, and to have a "pale" in front of every house (l. c., 12, 105); the attempt failed, though a pale of Colony days still remains in front of the Old South meeting-house (7 Bost. Rec. Comm., 60), being the last pale mentioned in the Town Records. At present the term street includes the sidewalks on either side of the street (Boston City Ordinances, 1892, p. 4); in early days the street was "between pale and pale," as now in Commonwealth avenue. The

uncertainty of the title in streets and highways led to extraordinary license. The General Court authorized the demolition of houses built "in any towne liberties [streets], preiuditiall to the townes, without leave from the townes" (1 Mass. Rec., 168); and the selectmen, encouraged by such authority, ordered a fine of ten pounds for every encroachment upon the street line, a fine they could not properly inflict, least of all without special authority from a general town meeting. In 1641–2 the selectmen ordered "for the preserving of all high wayes in this Towne, that none shall dig any sand or clay in any of them, under the penalty of 5*s*. per load" (2 Bost. Rec. Comm., 67). The condition of these ways may be imagined; in the highways the freeman or inhabitant was required to do very little, in the town-ways nothing at all. For fear of expecting too much of public spirit or private duty, the General Court resolved in 1639 that "it is not intended that any person shall be charged with the repairing of the high wayes in his owne land" (1 Mass. Rec., 280). In the case of gates and rails encroaching upon the highway, county courts or the court of assistants might appoint a committee (2 Mass. Rec., 192). No wonder the General Court appointed, in 1667, a committee "to bring in an effectuall order for keeping in good repayre all streets and highways" (4 Mass. Rec., part II, 350).

The principal highways in early Boston were those leading to Roxbury and Charlestown, communication with Cambridge being neglected until later days. In the beginning, it seems, no allowance for travel to or from Roxbury was made. In 1636 surveyors were appointed to make a "sufficient foote way," apparently along the neck to Roxbury. They seem to have failed, for within a year "Thomas Grubbe and Jonathan Negoose are Chosen Surveyors for the high wayes towards Roxbury (2 Bost. Rec. Comm., 10, 16), and in 1650 Peter Oliver was to "have £15 per annum, for 7 years, to maintaine the High wayes from Jacob Eliots Barne [near the present corner of Washington and Boylston streets] to the fardest gate bye Roxsbery Towns end, to be sofficient for Carte and horse, to the satisfaction of the Countrye" (l. c., 99. See, also, 7 Bost. Rec. Comm., 22). In 1635 Thomas Marshall was chosen to maintain a ferry from "Miln Point" to Charlestown. The town was in 1642–3 called upon to lay out a convenient way to the ferry as well as to the windmill on Copps hill (l. c., 72), but the committee simply reserved a highway through that part of the town, to be laid out in the future, but to be thirty-three feet wide, and as straight as the

lay of the land might permit (l. c., 73). When the water mill was built, it was connected with Copps hill by a highway "a rod in breadth" (l. c., 95). Other streets had to be built through this part of the town, but only the "highway" was thirty-three feet wide, while the town ways were a rod in width, the ground for them being taken from private owners who were entitled to pay (l. c., 100). One of these ways, given by Thomas Marshall, was relinquished by the selectmen in 1652, to save expense. In other words, in 1650 the town of Boston had begun to buy land for streets, and from necessity bought as little as would suffice for immediate wants. It has pursued that policy ever since. When Boston opened the way to Roxbury it had previously closed, no road led through Roxbury to Muddy River, which was a part of Boston. Only the General Court could solve this difficulty, and appointed in 1645 a committee that laid out the highway, and assessed the cost in part on Boston (2 Mass. Rec., 115). The committee was continued in 1658 (4 Mass. Rec., part I, 327). The owners of the land through which the highway passed, were awarded "meete satisfaction." Boston, then, had to pay dearly for its own ways, and for necessary travel through another town. If any of the streets were paved, it was done at private expense; but it is more likely that colonial Boston had no paved streets (Bost. Rec. Comm., 53, 59, 66, 85, 99, 108, 116, 127). Rather than go to the cost of paving, every cart horse in town was required to give one day's work to street repairs, under the direction of the surveyors of highways.

The earliest houses in Boston were made of mud walls and thatched roofs (2 Bost. Rec. Comm., 40). But frame buildings were put up as soon as the wood could be prepared. At first the logs were sawed in Boston, and the market place, the site of the old State house, was once used as a "sawe pitte." Timber not being abundant, brick making soon began, and after some heavy losses by fire, the General Court required that all buildings in Boston should be of brick or stone, and covered with slate or tiles (5 Mass. Rec., 240, 426); but the law was not permanently enforced, notwithstanding a severe penalty attached (7 Bost. Rec. Comm., 174). To fight fire and for other purposes, a number of conduits, or cisterns, were built, one near the town dock, another near the town house (2 Bost. Rec. Comm., 138, 158). These conduits, copied from English models, proved insufficient, as an attempt was made to feed them from springs which frequently failed. The first fire engine was imported from London in 1678, and was to be

served by paid men (7 Bost. Rec. Comm., 125). So the selectmen, always sustained by the town meeting, contrived to maintain order, to check irregularities, and to pilot the town successfully through many perplexing difficulties. This was achieved by moral force and remarkable judgment. In many cases the selectmen did not even act as a board, but as vested with individual authority. By a singular force of tradition this exercise of individual power on the part of members of a board survives in the practice of the aldermen, who are the successors and heirs of the selectmen. Even the law reflects this anomaly, a paper signed by a majority of selectmen or aldermen being generally received as representing the respective boards. Technically and in strictness, the board of aldermen can act only as a board (Public Stat. of 1882, ch. 28, se. 2; Acts of 1882, ch. 164).

The Town and Trade.

The jurisdiction of the town over the business affairs of the freemen and inhabitants was necessarily more limited than over the streets and highways, but not inconsiderable. In 1648 the General Court incorporated the shoemakers of Boston, also the coopers of Boston and Charlestown, giving them a monopoly of their trades, and virtually the character of guilds. This arrangement appears to have failed under the greater individual liberty exercised in a community where nearly everybody was a freeman, who helped directly in electing and defeating governors, and was himself, at least in theory, a part of the General Court. But the system of apprentices was formally adopted by the town. In 1660 a town meeting ordered that "no person shall henceforth open a shop in this town, nor occupy any manufacture or science, till he has completed 21 years of age, nor except he hath served seven years apprenticeship, by testimony under the hands of sufficient witnesses; and that all indentures made between any master and servant shall be brought in and enrolled in the Towne's Records within one month after the contract made, on penalty of ten shillings to be paid by the master at the time of the apprentices being made free" (2 Bost. Rec., 156). Under this order the selectmen of 1667–8 told John Farnum that he could not set up his son in the cooper trade, unless he had served the apprenticeship of seven years, "on penalty of 10 shillings per month" (7 Bost. Rec. Comm., 39). In this case the complaint was made by the coopers, but the authority relied on was

the town order, and the selectmen acted, claiming at the same time the doubtful right of inflicting a cumulative penalty. In other words, the town was treated as the only corporation, and the selectmen were supposed to be its executive officers. But the principle of free-trade, as then understood—every man to practise the trade he thought best—asserted itself beyond all legislative regulations before the colony ended. Boston began as an aristocracy; but the democratic principle triumphed over all obstacles; and the aristocracy yielded, except in social matters.

Before the founders left England, they considered the importance of iron works in the new world (1 Mass. Rec., 28, 30). Here the town of Boston led in the enterprise. In 1643 the town gave to John Winthrop, jun., and his associates, "three thousand acres of the common land at Braintry, for the encouragement of an iron worke, to be set up about Monotocot river" (2 Bost. Rec. Comm., 77). The General Court followed with a generous act of incorporation (2 Mass. Rec., 61, 125), and the enterprise had the benefit of Thomas Foley's advice and capital, Foley being one of the great English iron masters of his time. Governor Winslow, of Plymouth, was likewise interested in this undertaking, which has never died out, the Boston selectmen having chosen the best ground in all Massachusetts. They contributed also to the first ship built in Boston, the "Trial," which was built in 1641, and made her first voyage to the Azores, the second to Spain. The builder was Nehemiah Bourne, and the selectmen contributed the value of sixty acres that had been alienated by Brother Wright, of Braintree, who was fined £3 10*s*., to be paid to Bourne. The selectmen had no right to lay so heavy a fine; they probably relied on the fact that they were the guardians of the town lands, and that they were bound to put these lands to the best uses. The town did not object, and the proceeding stood (2 Bost. Rec. Comm., 58, 59). In 1645 the General Court opened all harbors of Massachusetts to "all ships from any of the ports of our native country or elsewhere, coming peaceably" (3 Mass. Rec., 12). The law remained until 1661, when it was repealed, possibly under the influence of the English navigation law passed in 1651, the influence of which is still felt.

In 1667 all sea-going vessels not owned in Massachusetts were required to pay tonnage dues whenever they entered a Massachusetts port, and a year later a customs tariff on imports and exports was adopted, to take effect on March 1, 1668–9. Boston and Massachusetts

had learned that commerce was apt to be so profitable as to bear taxing. By a certain inconsistency the navigation act then gathered the tax on commerce largely of home merchants. The navigation act known as 12 Carol., ch. 2, was formally adopted by Massachusetts in 1677 (5 Mass. Rec., 155), and in 1681–2 a naval office was established at Boston. James Russell was the first naval officer, and his commission was dated March 17, 1681–2 (5 Mass. Rec., 337–8). Within a year the General Court ordered that "the port of Boston, to which Charlestown is annexed, and the port of Salem . . are and shall be lawful ports in this colony, where all ships and other vessels shall lade or unlade any of the plantations enumerated goods, or other goods from foreign parts, and nowhere else, on penalty of the confiscation of such ship or vessel, with her goods, tackle, etc., as shall lade or unlade elsewhere" (5 Mass. Rec., 383). Russell's successor was Samuel Nowell. Arrivals in the port of Boston reported at Castle Island, the fortifications of which were originally intended to protect Boston from foreign enemies. Indeed Boston had chiefly paid for the "castle." If the navigation acts, the naval officer, and the custom-house of later days, injured Boston and her merchants, the town remained silent. In truth, the laws were not strictly enforced, and commerce did not suffer. Boston commerce appeared to depend on the wants of the people, and the enterprise that supplied these wants.

As early as 1633–4 Boston was made a market town. The market was held where the old State House stands, and Thursday was market day, when the people from the country could sell their goods to the people at Boston without difficulty, and take in return what merchandise was for sale. In 1648 Boston received authority to hold two fairs a year, in June and October (2 Mass. Rec., 257), which led at the next town meeting to the election of two "clarkes of the market." A fair was simply a market of two or three days; but a market was in those times the only chance of every comer to enjoy free trade in the full sense of the term. Clerks or superintendents of the market have been elected ever since, and the Market Department of the Boston city government may justly boast of being the first of all such departments here established. It dates back to March 12, 1649. By a quaint anomaly the market department has become a source of great revenue to the city, when the characteristic of the old markets was that they should be entirely free. This freedom from expense, even rent, was expressly guaranteed when the first town house was built in Boston, and the

lower part of it reserved for market purposes: "The place underneath [the town house, which stood on pillars] shall be free for all inhabitants in this jurisdiction, to make use of as a market for ever, without payment of any toll or tribute whatever" (4 Mass. Rec., part i, 327). It deserves notice, also, that the first department established in our town government should have slipped away from the selectmen, as far as the administrative work of this department is concerned. The power so lost they have never regained; neither have their successors, the aldermen. Very likely the selectmen of 1649 were not aware that the election of clerks of the market by the town meeting was the first marked step toward reducing the management of all town prudentials by selectmen. In time they were to lose more.

Finances, Temperance, Schools.

In the matter of finance, the town bore heavy burdens from the beginning, and always proceeded with good judgment. Since 1885 the financial officers of the city are the appointees of the mayor, and not responsible to anybody but him. Even the auditing of accounts is controlled by the executive head of the city. The selectmen of colonial Boston were too prudent to ask for such power. They assessed all taxes, but in making valuations of property for assessment purposes, they had the assistance or supervision of a special commissioner elected in town meeting. This arrangement began in 1646, and lasted to the end of the colonial period (3 Mass. Rec., 87, 116). The taxes, or rates, were always collected by constables. But the selectmen generally chose the town treasurer, the town appointing committees for the examination and auditing of accounts. The report of this committee in 1685 (7 Bost. Rec. Comm., 175) is a good illustration. The town tax usually exceeded the "country rate," as it was called, though the latter was high. The country rate, or State tax, paid by Boston, amounted in the five years from 1675 to 1679 to £10,776 5*s.* 2*d.* Of this total, £10,353 5*s.* 2*d.* went to John Hull, the treasurer of Massachusetts, who gave Thomas Brattle, the treasurer of Boston, a full discharge (7 Bost. Rec. Comm., 153). The amount was occasioned mainly by King Philip's war. The ordinary town expenses, at the end of the colonial period, were about 400 pounds a year, mostly fixed charges for schools, for the poor, for highways, and for rents and repairs. To obtain this sum, about 600 pounds was the sum committed to the constables for collection. An interesting account of the town budget, from Edward Wil-

lis, town treasurer, is preserved in the Town Records of 1686 (7 Bost. Rec. Comm., 187). The number of polls, in 1687, was returned at 1,447, but included all males of the age of sixteen and above (l. c., 194). This fixes the population for that year at more than 5,000, a small number of whom lived in Muddy River or Rumney Marsh. Then, as now, the tax laws were made by the General Court, and the town officers were required to collect both the State tax and the town money. The colonial selectmen discharged this duty with ability and integrity.

The liquor laws of the time were not radically unlike those of the present time. The town simply recommended persons that might be trusted to sell intoxicating drink, and supervised the proper administration of the law; but did not issue licenses, and did not receive the revenue connected with the liquor business. This revenue consisted in import duties, license fees, and excise, and went to the colony. In 1681–2, when Boston had three churches and three schools, it was allowed six wine taverns or wholesalers, ten innholders, and eight retailers, who sold liquor to be drunk in the homes of the people. Intemperance was greater than now. On the whole, the people had very little to do with the regulation of this traffic, local option being a modern growth, and opinion increasingly sensitive. The selectmen of colonial Boston were the overseers of the poor. They needed an almshouse, but did not succeed in getting it, while their expenses for the poor were very considerable. Most of the bequests made to early Boston were for the poor of the town, and in most cases it was necessary to pay out the principal; so urgent were the necessities of the selectmen.

The school system of Boston, now its most democratic institution, had its beginning in the establishment of the Latin school and Harvard College. But the people at large never intended to go to college or study Latin. To supply the wants of the plain people, who are the town, a school with Latin in it, and looking to the ministry, did not answer. On December 18, 1682, a public meeting of the inhabitants appointed a committee, including the selectmen, to "consider of and provide one or more free schools for the teaching of children to write and cipher, within this town" (7 Bost. Rec. Comm., 158). The committee voted that two such schools should be established; that the town should allow £25 for each; and that parents might improve the teachers' lot by paying tuition. On November 24, 1684, the selectmen en-

gaged John Cole to keep a free school for instruction in reading and writing, his pay to consist in £10 in money, and £20 in country pay. When the colony ended, Boston had the Latin school, and two schools for reading and writing English. The care for these schools did not fall altogether upon the selectmen, though they had to supply the larger part of the money. The care of the schools gradually drifted away from the selectmen, and in modern days became an independent branch of our municipal government. The selectmen and their successors never managed the schools. Indeed, the free school is the work of the people, and the people have generally preferred to control the free school more directly than by a general town or city government.

Results.

The colony government, under the patent of 1629, ended in May, 1686. The Province government, under the charter of 1691, began in May, 1692. The interregnum was brief. President Dudley and his council served less than a year, and Sir Edmund Andros was swept away, together with Edward Randolph, in the revolution of April 20, 1689, when the colony resumed its former methods of doing business, and so continued until the arrival of Sir William Phips and the beginning of the Province government. In the sixty-two years of its history under the colony, the town of Boston had become the most influential town in New England and America. Since 1680–81 it was the only town that had three deputies in the General Court (5 Mass. Rec., 305). The colony had enjoyed complete self-government, and enabled the towns of Massachusetts to enjoy the same privilege in all prudential affairs of a municipality. No town made better uses of this opportunity than Boston. It laid the foundations of a municipal government which has rarely failed the community in its reasonable expectations, and on historic occasions pointed the way to the highest duty and honor. Nearly everything that makes the government of Boston attractive or instructive, has its root in the high endeavors and hopeful ambition of the colonial period. As late as 1685 the town instructed its officers not to collect a fine of £100 lawfully ordered by the county authorities. It had previously defied a king; it was to defy another. Boston has never defied Massachusetts. Yet it was Boston that prevented the counties of Massachusetts from being a power between the town and the commonwealth. It was Boston that insisted upon direct dealings be-

tween the commonwealth and the towns that gave the commonwealth its character and strength. It was Boston that gave the town and town government a superior dignity that has been admired by many great minds, and rarely criticised by any mind. Colonial Boston began as an aristocracy; it ended as a pure democracy. This interesting transition entitles the people of colonial Boston to enduring honor; for the change was made almost imperceptibly. The more the whole community was fit for municipal self-government, the more it had. Special praise, however, is due to the early leaders. They never sought to defend the aristocratic institutions in church and state they had brought with them from England; but helped bravely and wisely to elevate the entire community to a reasonable understanding of what was best calculated to build a good town and a free commonwealth. A commonwealth like Massachusetts, and a community like Boston, are not a natural growth, nor the result of evolution and happy environment, but the work of reasoning and highly ethical generations, who know what is best, and always make for moral and political freedom, whatever the sacrifice.

After two centuries of political experience it is easy to point out where the Colony failed: It did not separate the powers of government. With equal justice the founders may be charged with not having been logical. But it is a mistake to estimate the seventeenth century by the nineteenth; the true business of the historian is to show how the present resulted from the past. We should not forget that the seventeenth century was emphatically a theological age, when dogmatic theology ruled supreme. Our time is emphatically untheological, and not kind to dogmatic theology. Whether this is really a gain, may be open to doubt; it is not doubtful, perhaps, that a scientific or science-making age is not the best qualified to judge a time when religion reigned supreme and the ideal interests of mankind had a theological cast, as if the highest hopes could not be separated from the eternities. We of the present are not given to theology; but the idealism of Massachusetts and its capital began with the theological founders. Whatever our opinion of dogmatic theology, it is an ideal pursuit; and it is the special honor of Boston and Massachusetts that, in the midst of practical labors, they have always evinced a marked interest in the ideal concerns of mankind. Scholarship has never languished in Boston; here is the cradle of our national literature; fine art has made Boston a home; Boston artisans have ever tried for the best.

This whole continent owes a debt to Puritan Boston. But the eminence of Boston in practical government and the ideal life began in 1630. In the days of the Puritan colony it was supreme. Liverpool and Glasgow have no such story to tell; neither have Hamburg and Marseilles. In the seventeenth century they were strangers to ideal pursuits; Boston was not.

The colony passed easily and very early from a government by freemen to representative institutions, or government by the representatives of freemen. The town of Boston was anxious to take a like step, but was prevented by the sister towns as represented in the General Court. A preference of town government to incorporated cities is still the dominating creed of Massachusetts, although a city is nothing but a town with representative institutions. The same sentiment attributes to towns certain prescriptive powers or rights, which are denied to the city, as though a city had only enumerated rights, expressly conferred, while towns are sometimes thought to have all municipal powers not expressly denied. The early selectmen proceeded on this latter theory, and it is due to them that our aldermen's powers cannot be enumerated. Meanwhile it is odd, and illustrates the conservative force of tradition, that public opinion in 1893, as in 1650, looks upon representative government in the State as safe and necessary, in municipal matters as apt to be fraught with mischief and a loss of popular rights. In truth, the founders of Boston reasoned deeper and better on town government than this century does on city government. It is safe to add that the early selectmen of Boston vindicated their rights more effectually than did the city officers of two centuries later. So well did the early selectmen manage as not to invite the interference of the General Court, or even of the town meeting; a later age goes to the State House when it wishes to govern Boston. Nor should it be forgotten that municipal self-government must vindicate itself. Had the constitution of Boston from 1630 to 1692 been ill administered, the General Court would have been glad to offer relief; but no relief was needed; Boston took better care of itself than did the commonwealth. For this we are indebted to the early selectmen; they taught a lesson for all time.

Yet who can deny that the constitutional law of colonial Boston and Massachusetts was ill-defined? The colonists constantly spoke of the magistrates, who were the "assistants," or board of directors, surrounding the Governor. They were intended by the patent to be ex-

ecutive officers; they turned out to be a branch of the General Court, and judges from whom litigants could appeal to the General Court. The weakness of the system lay in the jealousy with which the executive power was scattered, while the assistants wielded great power in legislation and as the chief judiciary of the country. This waste of executive power, accidentally enhanced by the establishment of a council (1 Mass. Rec., 361), still affects the Commonwealth; in colonial times it led the selectmen of towns to assume much executive power, an appeal lying, not to a superior executive who could have acted, but to magistrates or the General Court who would deliberate. The county officers never had much executive authority, and the Governor less. Hence the executive power of towns had to be exercised by special officers or committees; as a matter of fact, the selectmen soon became a standing committee of the town for all executive purposes and for the prudentials. In short, while the executive officers of the commonwealth were intentionally deprived of power, the selectmen became general executive officers in town affairs, partly from necessity, but mainly from choice. They were the best executive product of the time. This outcome is certainly remarkable; for the patent intended the Governor to be an executive of real power, assisted but not limited by the assistants. He became a respectable figure head; the assistants became judges and the higher branch of the General Court, while the town, relieved of court business, and too busy for making many by-laws, evolved the selectman, whose duties were almost altogether executive or administrative. But being men of energy, the selectmen of the colonial age exercised many powers never conferred upon them by the town, much less by the General Court.

PROVINCIAL PERIOD, 1692 TO 1776.

The Province Charter was signed October 7, 1691; but the government under the new charter did not begin until May 14, 1692, and the first act of the General Court in the Province period was not passed until June 14, 1692. It is proper, therefore, to treat the colonial period as ending in 1692, and to consider the Andros interregnum, from 1686 to 1689, a mere episode, the effect of which upon the town government of Boston was very slight. Indeed, the town government was so well established, and Andros as well as Randolph so little appreciated its importance, that they scarcely made an impression upon the organization of the town which led in their overthrow. The Province period

ended in 1776. If a day may be named, it should be July 4, although the Revolution began much earlier, and was complete in Massachusetts as early as 1774. Great Britain, on the other hand, did not formally recognize the independence of Massachusetts and the United States until November 30, 1782, and the definitive treaty recognizing the United States was not signed until September 3, 1783. July 4, 1776, was acknowledged beforehand by the Boston town meeting as Independence Day, for it resolved on May 23, 1776, that "If the Honorable Continental Congress should, for the Safety of the Colonies, declare them Independent of the Kingdom of Great Britain, they, the Inhabitants, will solemnly engage with their Lives and Fortunes to support them in the Measure" (18 Bost. Rec. Comm., 235). It is the honor of Boston, as a municipality, to have taken a leading part in defending American independence against both Andros and Gage.

The freedom of a state is indicated by the self-government it enjoys, and political maturity is indicated by municipal self-government. The Massachusetts Colony governed itself, and expected each town to do the same. The Province indicated a marked decline from the freedom of the colonial period. The Colony chose its own governor; under the Province charter the crown appointed the governor, the lieutenant-governor, and the secretary. The Colony made its own laws, and the only recognized test of these laws was that they must not conflict with the patent of 1629. The Province was required to submit its laws to the privy council in England for review, and they were subject to nullification on the part of the privy council within three years after receipt. The charter, then, did not encourage freedom, and did not contemplate municipal self-government, except that the subjects of the Province were supposed to have the liberty and immunity of natural born Englishmen. The towns were incidentally recognized by the charter, but the writers of the charter probably did not know a Massachusetts town. When the crown learnt from Boston the meaning of town and town meeting, Governor Gage was instructed not to let any town meetings be called without his knowledge and consent; to which the Boston selectmen replied with grim humor that they had no need of calling a town meeting, for "we had two now alive by adjournment" (23 Bost. Rec. Comm., 225). For the validity of this proceeding they relied on the law of the Province, which had the approval of the privy council.

Area and Population.

The Province inherited Boston a flourishing town of about six thousand inhabitants, and including the present towns of Brookline, Revere and Winthrop, as well as the city of Chelsea. Suffolk county included Boston, Roxbury, Dorchester, Milton, Braintree, Weymouth, Hingham, Hull, Dedham, Medfield, Wrentham, Mendon, and Oxford. Before long, Woodstock was added, being settled by emigrants from Roxbury, and originally called New Roxbury. It passed to Connecticut about 1749, though the Province never gave up its claim. In 1705 Brookline was set off from Boston, and in 1739 Chelsea became independent of Boston. The town of Boston had sold, also, its lands in Braintree. From 1739 to 1804, then, when South Boston was added, Boston was small in area. In 1742 it boasted of 16,382 inhabitants; in 1771 it was supposed to have 1,800 dwelling-houses; but on July 4, 1776, it had less than 3,000 residents, many being absent on account of the war and the smallpox then raging in Boston. A few months later, 907 men from Boston were reported to be in the service of the country against Great Britain. Meanwhile Suffolk county had been greatly reduced, notably by the establishment of Worcester county, in 1731, when Mendon, Woodstock, Oxford, Sutton, and Uxbridge were set off. For in 1730 the county of Suffolk comprised the following towns: Boston, Roxbury, Dorchester, Hingham, Braintree, Dedham, Medfield, Medway, Weymouth, Milton, Hull, Wrentham, Mendon, Woodstock, Brookline, Needham, Sutton, Oxford, Bellingham, Walpole, Stoughton, and Uxbridge. On July 4, 1776, Suffolk county comprised Boston, Roxbury, Dorchester, Milton, Braintree, Weymouth, Hingham, Dedham, Medfield, Wrentham, Brookline, Needham, Stoughton, Stoughtonham District, Medway, Bellingham, Hull, Walpole, Chelsea, and Cohasset. But the power of the county was small; its chief importance lay in the administration of justice, which was wisely kept from town control and from all town officers.

The people were comparatively homogeneous, the chief distinction being between rich and poor, and between old families and later arrivals. As late as 1770 the town complained that the crown in dealing with Boston proscribed "patricians and plebeians" (18 Bost. Rec. Comm., 31). At the beginning of the Province period, the right in the Common was reserved to the old settlers (11 Bost. Rec. Comm., 20, 89); but as the time went on, this claim was effaced. The people en-

joyed liberty of conscience; but this liberty did not extend to "Papists," nor to Jews. Accordingly there was no Catholic church in provincial Boston; but a French Protestant church appears to have existed at the beginning of the seventeenth century. Toward the end of the provincial period a German Lutheran church appears to have struggled for life (18 Bost. Rec. Comm., 159). In 1771 a dancing school was licensed, but the teaching of French was viewed with distrust. Entertainments were given at Faneuil Hall, which was completed in 1742, and occasionally at "Concert Hall." The town grew fast, but suffered a setback after 1720, then recovered, to undergo a gradual decline in the last twenty-five years of the provincial period. The currency was generally in wretched condition. In 1774 £100 sterling equalled £133 "lawful," and £1,000 "old tenor." A dollar was rated at 4*s.* 6*d.* sterling, or 6*s.* lawful. Yet the provincial period began with a splendid growth; it paved the streets and sidewalks; it built sewers to drain houses; it named the streets and lanes; it straightened and widened many of them; it built Boston light, long wharf, and the town dock; it printed the town bylaws; it established wards; it adopted the social titles still in use; and at the end of the period it introduced street lamps It found Boston a plain community, to leave it a complex town to the next age.

The Town and the Province.

It was fortunate for the cause of town government that the crown, in granting the Province charter, placed the supervision of towns entirely in the power of the Province. To be sure, the crown could veto Province laws, but it never touched those relating to towns. The town of Boston, moreover, had a sort of partnership with the Province. The General Court met in the Boston town hall; Boston was the metropolis of Massachusetts; the leading men of the Province were many of them Bostonians, and not infrequently town officers. The modern feeling between city and country did not exist, and all towns as such had the same interest regarding the Province or the General Court. The latter was not ill disposed toward Boston, though it passed many special laws affecting Boston only. The idea that a town could not exercise any rights, save such as were granted by the General Court, was not then born. On the contrary, the towns acted freely, save where the General Court had raised a distinct barrier. Many of the rights exercised, both by towns and town officers, were prescriptive, the object being, not to

develop a system of jurisprudence, but to satisfy the wants and requirements of the body politic. Compared with the Colony period, the rights of the Province, and indirectly of all towns in the Province, were greatly curtailed under the charter of 1691. In practice, the Province suffered more than did its towns, the latter having no dealings with the privy council, and very few with the officers appointed by the crown. The Province was friendly, if not always prudent, in dealing with town government. If the latter was wise, it did not owe its wisdom to crown or Province, but to the common sense of the people dealing directly with their own affairs.

The charter of 1691 confirmed the title of all towns in their lands (1 Prov. Laws, 9). This barred the General Court from disposing of town lands, and gave the towns a certain power independently of the Province. In order to settle the difficulties involved in the distribution of town lands,—difficulties likely to increase with the growth of the Province and the corresponding increase in the price of lands,—the General Court found it convenient to refer the problem to the law courts. The act was passed in 1694 (1 Province Laws, 182), and incidentally made the town a corporation in law as well as in fact. In Colony days the Massachusetts town had neither sued nor been sued. In 1692 the General Court had passed a general act (l. c., 64) confirming the towns in their boundaries, and authorizing them to continue their town business; but this general town charter continued the Colony law (Col. Laws, 1672, ed. Whitm., 149) that "no cottage or dwelling-place in any town shall be admitted to the privilege of commonage [for] wood[s], timber and herbage, or any other the privileges which lie in common in any town, or peculiar, other than such as were erected or privileged by the grant of such town, or peculiar, before the year 1661, or that have been since, or shall hereafter be, granted by the consent of any town, or peculiar" (1 Prov. Laws, 65). From the first arrivals of Englishmen in Massachusetts, they thought themselves the owners of the land, and all later arrivals were looked upon as intruders who must acquire and establish their rights. Fortunately this principle was never applied to towns in their corporate capacity. A happy star had stood over their birth; it did not set when a less generous age came with the Province.

The difference between the Colony and the Province in town matters is best illustrated by the general town acts passed in 1636 (1 Mass. Rec., 172) and 1692 (1 Prov. Laws, 64). The Colony told the

towns to do as they pleased in town matters, provided the laws and orders of the General Court were not violated. The freemen of each town might distribute town lands and all other town privileges by majority vote. The Province act undertook to regulate the distribution or allotment of undivided land either "according to the interests," or "by the major part of such proprietors" (l. c., 65). This did not work, and the matter was referred to the law courts (l. c., 182). The act for towns contained stringent provisions against idle persons and intruders; provided for the care of the poor; and offered relief in case constables or selectmen refused to do their duty; but the most important provision authorized towns, or their selectmen, to make all necessary rules, orders and bylaws relating to the prudential affairs of the town, provided these orders and bylaws were not to be binding, unless approved by the Court of Sessions, which consisted of justices of the peace appointed by the governor, with the advice and consent of the council. The Court of General Sessions of the Peace was not organized until the act of 1699 was passed (l. c., 367). It consisted of the justices of the peace for the county, or so many of them as should be limited in their commissions, and had both civil and criminal jurisdiction. In addition this court had charge of the county prudentials. It continued throughout the Province period, survived under the State constitution, and finally occasioned the incorporation of Boston as a city, one of the main purposes of which was to get rid of the court of sessions that had become a drag on all town affairs. The Colony, too, had encouraged law courts to engage in administrative work.

Boston and the Court of Sessions.

Before the court of sessions began to delay the affairs of Boston, the General Court repealed the fatal clause of 1692 under which the sessions had the absolute veto power on town orders and bylaws, and the power of enforcing these was given to the selectmen, defendants having the right of appeal to the justices in quarter sessions. Unfortunately this excellent provision was hidden in an act dealing with militia and other matters, and was thrown out by the privy council (1 Prov. Laws, 217, 263). No town suffered more in consequence than Boston. In 1701 the town undertook to codify its bylaws, and passed a code of nearly forty titles, on May 12. On August 5 it was announced that the court of sessions had vetoed all but twelve. The town tried

again on September 22, and was more fortunate, the attempt at town independence having been abandoned (compare 8 Bost. Rec. Comm., 9–21, with the "Several Rules, Orders, and By-Laws, approved by his majesties justices," and printed in 1702). Undoubtedly the meddling of the sessions with town affairs was specially distasteful to the selectmen; but they offered very little opposition, and the town meeting none at all. The power of the sessions was accordingly increased, and that of selectmen correspondingly diminished. In 1713 the power of laying out town ways, previously exercised only by the selectmen or their agents, was vested in the sessions, to be exercised whenever the selectmen were charged with delay or something worse. One would have expected that, in case any selectmen were slow in laying out a town way really needed, the parties aggrieved might appeal to the town meeting. But in the Province period the court of sessions was superior to the town meeting, and, unlike the town meeting, could enforce its orders by fine and imprisonment. Fortunately, Americans have never resisted the courts of law. Law courts have been forestalled, but not resisted.

Throughout the Province period liquor licenses were issued by the court of sessions, the selectmen having only the veto power. The court of sessions ordered prisons to be built and maintained at pleasure; the same court ordered all county taxes, and assessed them on each town; in general, the court heard appeals from selectmen, town meetings and towns, and any member of the court could punish the breach of a town law. In addition, the court of sessions heard and determined "all matters relating to the conservation of the peace, and punishment of offenders" (1 Prov. Laws, 367). The essence of police power, therefore, rested practically with the court of sessions, or its members, the result being peculiarly unhappy, as the justices could not directly set up and manage a suitable police force. The effects are still felt. The duty of preserving the peace in Boston was at first vested in the constable. As constables were chosen by the town, which preferred prominent men for unsalaried offices, it was difficult to find suitable persons to discharge the unpopular and ungentlemanly duties of the constable. For night service, watchmen were employed, unless the militia happened to keep what was called a "military watch" (Col. Laws, 1660, ed. Whitm., 178–9; 1 Prov. Laws, 129). The night police was first a "constable's watch" (Col. Laws, 1660, ed. Whitm., 198–9); but in 1699 the justices and selectmen together were authorized to em-

ploy a night police force other than the constables' watch, which had proved inadequate for Boston (1 Prov. Laws, 382, s. fin.). The town voted the cost, but the assessment was vested in the court of sessions, which acted unsatisfactorily to the town (11 Bost. Rec. Comm., 108, 224, 234). Relief came in the act of 1761 (4 Prov. Laws, 462), which enabled the selectmen of Boston to employ a night police of their own. The act remained in force to the end of the Province period, and was invoked in 1774 to protect Boston from "sundry regiments of his majesty's troops" (18 Bost. Rec. Comm., 194–5). Seventy-two watchmen were to protect Boston from the troops of King George and all other harm, at least in the night time.

In law every justice of the peace was free to punish a breach of town laws, by issuing a warrant of distress, and the court of sessions had ample power, provided the offenders were duly presented. But the constables by day, and the watch by night, were unequal to the work expected of them. The moiety system was tried, the informer receiving half the fine ordered by a justice; but the system failed. In 1701 the town passed an interesting order authorizing the selectmen "yearly to nominate and appoint one or more meet persons in the several divisions of the town, to inspect and prosecute the breach of all or any of the penal orders which are or shall hereafter be made by this town, and allowed of by the sessions of the peace, and to allow and assign such persons salaries and rewards, as unto the said selectmen shall be judged meet and convenient" (8 Bost. Rec. Comm., 15); but the order was apparently vetoed by the court of sessions, though occasionally carried out (11 Bost. Rec. Comm., 61, 63, 66, 67, 86). Of course, occasional prosecutions were justly unpopular, and could not take the place of a systematic police force, which came much later. In Colony times, the selectmen frequently made town orders or bylaws, with penalties attached, and as frequently enforced them, the fine going into the town treasury. The selectmen of the Province period were not able to exercise such power, and the town suffered accordingly. It is an open question, perhaps, whether the police of a town like provincial Boston should and could bring all violations of town and Province law to justice; it is less doubtful that every town is the best enforcement of its own orders, and that the self-government of towns calls for an efficient town police, which may be supplemented, but cannot be replaced, by a general police force. The more the towns take care of themselves, the better for all. It took Boston more than two centuries

to produce anything like a systematic police force. The fault, if any, did not lie with Boston alone.

Attempts at Relief.

It was inevitable that the dependence of the town on county officers should lead to delay and dissatisfaction. It was natural that the selectmen should be the first to propose relief. In 1708 they told the town meeting that "the orders and bylaws of this town . . . have not answered the ends for which they were made, and the principal cause thereof is a general defect or neglect in the execution, without which the best laws will signify little. And one great reason why they are no better executed is the want of a proper head, or town officer or officers, empowered for that purpose, the law having put the execution of town orders into the hands of the justices only, who are not town but county officers" (8 Bost. Rec. Comm., 55). The selectmen added that the justices could not be expected to make town affairs their special business, and that it was inconsistent to let a town make its own rules and regulations, but deprive it of the power to enforce them. For relief they proposed a charter of incorporation, to be drafted by a large committee. The same committee was requested to propose "some way for lessening the charges of this town" (l. c., 56). The committee presented the draft of a charter, for which they received the thanks of the town, which then proceeded to reject the whole scheme (l. c., 59). Evidently the selectmen felt their dependence on the court of sessions more keenly than did the people of the town. At that time Boston was growing very fast; prosperity reigned; the town was undergoing the happy transformation from a plain village to a complex community, in which there was ample opportunity for men of ambition; and the average "inhabitant" was not aware that the shoe pinched. He prospered; he did not care that the selectmen felt embarrassed; perhaps he did not care much for the breach of town laws, save where he suffered personal inconvenience; and he was by no means ready to part with power, for the purpose of increasing the power of town or city officers. It is not in the nature of democracy to part with power, such as could be exercised in town meeting, and to increase the delegated power of elective officers. So the attempt of 1708–9 to make Boston a city, failed on the spot. Leading men favored the change; the town meeting did not.

The demagogue had not troubled the Colony; he appeared in the Province. The democracy of the Colony followed the leaders, who were men of great ability and political integrity; the democracy of the Province began to do its own leading, and to distrust all leaders not in full sympathy with the aims and opinions of the rising democracy. The Colonial age was simple and pure; the Provincial age was more complex and comparatively corrupt. In 1744 Boston suffered severely. The Province had indulged in the fatal experiment of issuing too much paper money, and underwent the usual effect; the number of rateable polls in Boston (males at least sixteen years of age) declined from 3,395 in 1738 to about 2,600 in 1746; trade was slack (14 Bost. Rec. Comm., 13, 100, 303); the tax laid upon Boston in 1744 was £30,000 old tenor. At such a time it might have been popular to propose an increase in the power of the town, especially by making Boston a county. Instead of that Thomas Hutchinson, himself a selectman, proposed that the General Court should confer greater power, not upon the town of Boston, but upon its selectmen and himself (l. c., 27). The matter was referred to the selectmen, who included Thomas Hutchinson and Samuel Adams. A majority of them proposed "that the selectmen for the time being, or the major part of them, be constituted a court of record, and vested with powers sufficient to try and determine all offenses against the bylaws of the town, their courts to be held the last Monday of every month" (l. c., 49). Adams did not sign the report, and the town declined to accept Hutchinson's report. It would have been a miracle if the town had voted to make the monthly meeting of the selectmen a police court, for trying every breach of a town order. It would have been strange if the town meeting had abdicated a part of its power to encourage the ambition of Thomas Hutchinson, who was full of schemes and plans for himself, while Adams schemed and planned and plotted for his town and country. The Hutchinson plan was impolitic and ill-timed. It failed accordingly (l. c. 27, 31, 47, 49).

In 1762 a number of inhabitants desired the town to "take such methods as shall be judged necessary for the incorporation of it" (19 Bost. Rec. Comm., 182). A clause to that effect was accordingly inserted in the warrant for the annual town meeting. The next clause in the same warrant called for a committee to reduce town expenses. A young democracy favors economy; a more advanced democracy favors liberal appropriations. The town meeting of 1762 refused the

committee (l. c., 72), and the question whether the town wished to be incorporated was "passed in the negative, almost unanimously" (l. c., 67). The truth is, the town was not prosperous, and it would have been hard to convince that as a city it could do better. When political struggles with the mother country were added to the economic struggles at home, and when the town of Boston was almost deserted —its population fell from near 20,000 in 1738, to less than 3,000 in 1776—there was no occasion to think of being incorporated a city, least of all when the historic town meetings of the Revolution were justly applauded by the United States. At a time when the independence of the country was in issue, there was no disposition to consider the independence of municipalities. Indeed, the autonomy and self-government of a town has room only in an autonomous and self-governing nation. As long as the Province of Massachusetts was not entirely autonomous and self-governing—for a Province with governors not of its own choosing is not independent—how could its towns be little republics? They might wish for independence; they would not find it in a dependent Province. The Colony of Massachusetts was free; the Province of Massachusetts was not.

Domicile and Suffrage.

Both domicile and suffrage were municipal throughout the Province period, and, with the exception that anybody could become a freeholder by purchase, domicile and suffrage could not be acquired without the consent of the town or its selectmen. In practise it was the selectmen who admitted inhabitants and approved voters. Under the general town charter of 1692, strangers obtained the right of domicile in any town of the Province by living there for three months without protest on the part of the town. The protest, to be effectual, must be served on the stranger, and a record left with the court of sessions (1 Prov. Laws, 67). It was the selectmen who had to act in the premises, and in case they failed to give due warning to strangers, the latter became legal residents, with a right to town relief when needed. The cost of poor relief was among the heaviest burdens borne by Boston throughout the Province period.

In 1700–1 masters of immigrant vessels were required to give a full list of such passengers, "and their circumstances," and the selectmen were authorized to require a bond for the support of any immigrants, should they prove unable to support themselves, or to return them to

the vessel in which they came. Domicile was not acquired, save by a freehold, by birth in the town where domicile was claimed, by serving an apprenticeship, or by twelve months' residence without warning (l. c., 451). While the act of 1700–1 made the master of immigrant vessels responsible for the poor and the helpless he brought, the law of 1722 (2 Prov. Laws, 244) made him responsible for all passengers he brought. In theory, then, the selectmen of Boston were well prepared to keep out all undesirable inhabitants; in practice they failed. When strangers thought they could improve their condition by going to Boston, to Boston they went; when fortune or hope beckoned elsewhere, Boston could not hold them. The Province pursued a clear course. As early as 1705 it required four pounds for every negro brought into the Province (1 Province Laws, 578), and in 1708–9 the same rule was applied to Indians (l. c., 634), while during some years a premium of forty shillings was paid for every white man-servant, between the age of eight and twenty-five years, brought from "the kingdom of Great Britain." In 1718, when the bills of credit issued by the Province were depreciated, the council recommended that the importation of white servants be again encouraged (l. c., 580), and the General Court prohibited the abduction of servants and apprentices under a fine of fifty pounds (2 Prov. Laws, 119). The Boston selectmen were mainly troubled by adventurous persons from other provinces trying to gain a residence in Boston. The list of such individuals warned out of town included persons calling themselves worsted combers, dyers, clockmakers, gardeners, and even coachmakers, at a time when the streets of Boston had barely been named; and later on dancing masters, teachers of French, professors of singing, and "comic-satirick" lecturers. From about 1738 to 1776 the problem in Boston was not how to prevent men from acquiring domicile or a vote, but how to stay the steady decline of the population. In Boston it was a proud and strong, but dwindling, population that fought the historic fight for American independence. The greater, therefore, its honor. Revolutionary Boston consisted of native Bostonians.

None but freeholders could be members of the General Court, and a freeholder was simply a proprietor of land (1 Prov. Laws, 11, 452). Boston sent four members to the General Court of the Province, and was usually well represented in the Council, which was chosen by the General Court. The freemen of old had disappeared with the patent of 1629, and were succeeded by freeholders; but to entitle these to a

vote for members of the General Court, their freehold must be worth forty shillings a year. Other inhabitants were entitled to vote for members of the General Court when they had property to the value of at least fifty pounds sterling (l. c., 11, 315, 363). In town matters the law was more liberal. The general act of 1692 conferred the town suffrage upon all freeholders and upon any inhabitant who was "rateable at twenty pounds estate" (l. c., 65). In 1700–1 an inhabitant was defined as a person formally admitted to the town by the selectmen or in town meeting; but freeholders, persons born in the town, and those having served an apprenticeship in the town, were excepted from the necessity of a formal admission (l. c., 452). The poll tax, which was high, did not qualify for voting, and was assessed on all males who had completed their sixteenth year. Temporary acts passed in 1735 and 1738–9 (2 Prov. Laws, 761, 980), also in 1742–3 (3 Prov. Laws, 47), and from time to time renewed, further defined the general town act of 1692, which controlled throughout the Province period, and worked well, although it established a certain inequality not desirable in a democracy. It gave a marked preference to freeholders; this preference was intentional, and was recognized in the important act of 1700–1 (1 Prov. Laws, 452, s. fin.), though the General Court held in 1720 that freeholders were not qualified to vote in town meeting, unless rateable at twenty pounds estate, and this interpretation prevailed (1 Prov. Laws, 107; 2 Prov. Laws, 761; 3 Prov. Laws, 47; 5 Prov. Laws, 1121). Persons not freeholders depended for their vote to some extent upon the selectmen, who never abused the power they wielded. The difference in the voting qualifications for town and Province elections made it necessary to hold them separately, the popular town meeting being managed by moderators, while the meetings for Province elections were conducted by selectmen and attended by few persons. Apparently the highest number of votes cast for Boston representatives in the General Court of the Province was 723 (18 Bost. Rec. Comm., 78); in town meeting the number of voters present was apt to be much higher, especially at the annual meeting in March. The election of representatives for the General Court was usually held in May.

The first little code of town laws, issued by Boston in 1702, contained the important provision that town meetings should be conducted by a moderator, and that "no matter of any weight or moment shall be voted at any town meeting, without the same hath been specially exprest in the warrant" (8 Bost. Rec. Comm., 17, 21). In 1715 the

Province made a general law to the same effect (2 Prov. Laws, 30). This law, which prevented the town meeting from becoming a mob, required the selectmen, who called the town meetings, to insert in the warrant or call whatever ten freeholders might require under their hands, and added that "no matter or thing whatsoever shall be voted or determined, but what is inserted in the warrant for calling said meeting." The result was that the town meeting of the Province period was controlled by freeholders. This is no longer the case; but the Massachusetts laws of 1893 governing the town meeting (chapter 417, sec. 259–265) is almost to a letter a repetition of the Province law passed in 1715; this, in turn, repeats the Boston town orders of 1701; and these were evolved or wrought out by the experience of Boston under the Colony. It is this conservatism, this respect for precedent, this clinging to past experience, that best protects us from interesting experiments in government. However society may change, whatever leaps in the dark may be taken by persons and property, the body politic is deeply conservative, and rarely parts with a solid gain made in our history as an organized political community. And the history of its government is the greatest glory as well as the noblest inheritance of America. This inheritance is not fully appreciated, unless one first studies and masters the history of a government like Boston or some ancient town in New England.

Town Power.

The power vested in towns was not defined by the Province, and is not now defined. When towns came to be incorporated as cities, jurisprudence adopted the theory that cities could not exercise a right not conferred by the General Court, it being assumed that the city was "created" by the General Court, and that the creature had nothing beyond what was given by its creator. The theory reacted upon the power supposed to be in towns. But practice did not comply with the theory, and it is not rash to assume that in such cases the theory is imperfect, an ounce of fact being worth more than a pound of theory. The first act passed by the General Court under the Province undertook to continue "all the local laws" of the Colony, and ordained that they should "remain and continue in full force in the respective places for which they were made and used" (1 Prov. Laws, 27); and a later act adds that they "shall so continue, until the general assembly shall take further order" (l. c., 99). But both these acts were disallowed

by the privy council, which wanted to get rid of the Colony, and let the Province start fresh. None the less, and despite the remark in the general town act that selectmen were chosen "for the ordering and managing the prudential affairs of such town," and other town officers "for the executing of other matters and things in the laws appointed by them to be done and performed" (l. c., 65), this same act recognized town usage, and simply limited town acts by the requirement that they be "not repugnant to the general laws of the Province" (l. c., 66). In fact, neither the General Court nor the science of jurisprudence could foresee what a town ought to do in a given case, and the town of Boston found no legal or other difficulty in doing what it thought prudent. Its selectmen enjoyed a similar latitude; for no wisdom could tell exactly what was covered by the prudential affairs which the selectmen were chosen to manage.

In 1750 the General Court placed an excise duty of a shilling on every pound of tea sold in the Province (3 Prov. Laws, 496), whereupon the town of Boston objected. When the General Court dismissed the objection, the town meeting voted to "make application at home, in order to prevent said acts being confirmed by his majesty." Christopher Kilby was chosen as the town agent to get the General Court overruled by the privy council, and he was successful (14 Bost. Rec. Comm., 183–4, 241). If the town was the creature of the General Court, the creature was strong enough, it seems, to thwart the will of its immediate creator. No wonder it took courage to resist also the creator of the General Court. Before this battle, the town adopted in 1773 with unanimity a report submitted by Samuel Adams, and vindicating the right of the town meeting to consider as town affairs whatever touched the town, and to act accordingly. The report quoted the Province acts, and appealed at the same time to "the great and perpetual law of self-preservation, to which every natural person or corporate body hath an inherent right to recur." To Governor Hutchinson's statement that the town of Boston had no authority to discuss the salaries paid to judges in Massachusetts by order of the crown, the report replied that "no law forbids the inhabitants of towns in their corporate capacities to determine such points as were then determined," and added the general rule for town conduct that "where the law makes no special provision for the common safety, the people have a right to consult their own preservation." The town had asked that the General Court be called together to consider the judges' salaries, but

the Governor refused to act. The report disposes of the case by this reasoning, which fairly took the wind out of Governor Hutchinson's sail: "The town had determined upon no point but only that of petitioning the governor; and will his excellency or any one else affirm that the inhabitants of this or any other town have not a right, in their corporate capacity, to petition for a session of the general assembly, merely because the law of this Province, that authorizes towns to assemble, does not expressly make that the business of a town meeting?" (18 Bost. Rec. Comm., 120–125.)

No better vindication of the town meeting and its powers is on record, and Samuel Adams is justly considered the typical American of the typical town meeting. His report, moreover, was directed against Governor Hutchinson, the first scholar who made the constitutional history of Massachusetts his special study. But even if Hutchinson had quoted good law, the facts were plainly against him; and while it is conceivable that the law may be bent to the facts, it is not conceivable that the great facts of history can be bent to human statutes. The town of Boston had done many things not expressly authorized by the General Court, and not a few of these are living today. Massachusetts did not authorize towns to choose overseers of the poor until November 16, 1692 (1 Prov. Laws, 65, 67); at the annual town meeting of March 9, 1690–1, Boston chose four persons to be "ouer Seers of the poore of this towne for the yeare ensuinge," and on March 14, 1691–2, again elected four "Ouerseers of the poore by papor votes" (7 Bost. Rec. Comm., 206, 210). Indeed, the Province law merely recognized what the Boston town meeting had done, and the act of the town could not be undone by the General Court. In 1772 the Province incorporated the Boston overseers of the poor (5 Prov. Laws, 177), whose history dates back to the very Colony which the crown lawyers in London, together with their friends in Massachusetts, attempted by a fiction of the law to blot out of existence (see the interesting "observations" printed in 1 Province Laws, 109–110). The Colony pursued the true course, and even now it is the Colony, rather than the Province, that teaches us the lesson of local self-government, a part of which Massachusetts has yet to learn. A treasure lost for a long time is not necessarily lost for all time.

Town Officers.

The Province town inherited from the Colony nearly all the town offices named up to 1776. The town constable was the earliest of all

town officers, and among the few adopted directly from England. The tithingman, introduced in 1677, and originally appointed to look after ten families, his neighbors, was a sub-constable who looked after sabbath breakers (Col. Laws, 1672, ed. Whitm., 249). He was not thrifty; neither was his successor, the warden of 1761 (4 Prov. Laws, 417). The Massachusetts town immediately produced the selectmen, whose name means the men specially chosen or selected to manage the prudentials of the town. In 1641 the Boston selectmen chose a treasurer and recorder, and in 1650 the office was divided; but the recorder was not called town clerk until 1693 (7 Bost. Rec. Comm., 213), the Province law of 1692 having provided for the annual choice, in town meeting, of a "town clerk, who shall be sworn truly to enter and record all town votes, orders, grants and divisions of land made by such town, and orders made by the selectmen" (1 Prov. Laws, 65). The market department of the city of Boston dates back to 1649. A sealer of weights and measures was chosen in 1650.

Overseers of the poor were appointed before the Province charter was signed (7 Bost. Rec. Comm., 206). The finance and school departments of Provincial Boston were inherited from the Colony age, which made a good beginning with a fire department; but the police and health departments of Colonial Boston were blind attempts. In the matter of laying out and repairing highways, as well as town ways, the fatal confusion of the Colony age was continued under the Province, and is still an inheritance. On the whole, then, the Colony was the creative age of the Boston government; the Province was not. Colonial Boston did not swear its selectmen; neither did Provincial Boston. Up to 1776 the selectmen of Boston had never acted as a board, always as a committee. Indeed, Provincial Boston barely preserved and bequeathed the great achievements of Colonial Boston.

Like the Colony, the Province drew a line more nominal than real between highways and town ways. Highways were to be laid out under the authority of the court of sessions, town ways by the selectmen; but the surveyors of highways were to repair all ways and bridges within their respective towns (1 Prov. Laws, 136). In 1727–8 it was provided that the act of the selectmen in laying out town ways, to be binding upon the town, must be formally approved by the town meeting (2 Prov. Laws, 453). The expense of constructing and maintaining all sorts of ways must be borne by the town, but the town could make almost any bargain with the persons nearest in interest. In theory the

surveyors employed "all persons from sixteen years old and upward," until all the ways were in proper condition. In practice the whole work in streets, including construction, repairs, and drains, drifted into the care of the selectmen, and the town meeting usually chose them surveyors of highways. They made pathetic efforts to charge paving and repairs to abuttors; but the law permitted the payment of highway repairs from the town tax, and gradually it became the rule of the town to meet all street expenses from the general tax levy. Sewers and drains, thanks to the act of 1709 (1 Prov. Laws, 643), were built and maintained at the expense of the immediate beneficiaries, the selectmen supervising the work, and assessing the cost. Notwithstanding this law, the town had a system of drains almost as soon as it had sidewalks, and paved streets, and a system of wards that was occasioned by the great care the town of Boston bestowed upon its poor (11 Bost. Rec. Comm., 240). The selectmen exercised in substance all the powers of a board of public works, beside being a board of health, a board of police, fire commissioners, and school committee. Early in Province days the Boston selectmen were relieved of the care for the town finances and for the poor; all other town affairs fell upon the selectmen. Yet Boston never developed faster, and never advanced more rapidly, than from 1700 to 1720, when it enjoyed the benefits of a cheap and abundant currency.

The first department to be separated from all others, in Provincial Boston, was the finance department. Under the Colony, valuations for tax purposes were made by the selectmen and a commissioner specially chosen by the town for that purpose (Col. Laws, 1672, ed. Whitm., 23, 1 Prov. L., 29). The selectmen usually decided what the town rate should be; to this they added the county and Colony rates, and the collections were made by the constables. The amounts were then expended by the selectmen, through the town treasurer, and apparently all went well. In 1687 the town was reported to have 1,447 rateable polls (males above sixteen years of age), and rateable estates to the value of £21,898 15*s.* On October 27, 1690, the Boston selectmen called for a town tax of £412 4*s.* 2*d.*; on June 11, 1691, they called for a town tax of £435 7*s.*, both rates being payable in "countrie pay," with an allowance of one-third to such as paid money (7 Bost. Rec. Comm., 194, 204, 208). The Province tax was very much larger, and, to facilitate its assessment, the General Court ordered each town to choose assessors. A Boston assessor must be a freeholder, and

"reputed worth" at least £300. On July 16, 1694, then, the town of Boston chose its first assessors (1 Prov. Laws, 166; 7 Bost. Rec. Comm., 219). The appointment of tax collectors, in the place of constables, had been previously authorized (1 Prov. Laws, 93, 409), but the town meeting was not unwilling to let the selectmen do the assessing and the collecting (8 Bost. Rec. Comm., 33, 35, 64, 116, 140, etc.). The selectmen, on the other hand, voted as early as 1702 to record abatements, as well as drafts on the town treasurer, "in the several books for that use." (11 Bost. Rec. Comm., 27). These financial records of Boston under the Province are lost.

It happens, therefore, that the finances of Colonial Boston are better known than those of the Province period. Of the latter we know very little, beyond the general appropriations made in town meeting, the nominal tax levy, and occasionally a balance sheet of the town treasurer. But all these figures should be used with extreme caution. Valuations were irregular; a tax assessed was never collected in full; and the currency was fluctuating. If the Province had been faultless in other respects, it should be condemned for the "bills of credit" it issued. This mischief began with the Province. When the old-tenor bills had been sufficiently multiplied to defeat the object for which they were issued, the Province ordered a new kind, eighty shillings of which "shall be in value equal to" a troy pound of standard silver, which was 37–40 fine (2 Prov. Laws, 818). This lawful money, then, as they called it, rated twenty shillings at three ounces of standard silver, while the royal mint rated a troypound of silver at 62 shillings. There was no objection to calling a pound of silver eighty shillings in Massachusetts, while in England it was called sixty-two shillings; there was great objection to depreciating whatever currency the Province saw fit to adopt. When the Province introduced its lawful money, so called, in 1737, it offered to accept old-tenor bills at one-third of their face value (l. c., 867). The new-tenor bills underwent the same fate as their predecessors, and when the Province became a State, its finances were in utter confusion. So were those of Boston, where a committee reported a debt of "near eighteen thousand pounds" just after Massachusetts had ceased to be a Province (18 Bost. Rec. Comm., 258–9). The town tax ordered in 1772 was £6,500; in 1773, £7,000; in 1774, £8,000 (l. c., 86, 135, 180); only a small part could be collected, and in 1775 no town tax appears to have been ordered. Boston received from the Province, in matters of finance, the good institution of asses-

sors and collectors, and a currency as bad as was ever inflicted upon a reputable community. Governor Belcher told the crown in 1737 that "his majesty's instruction always intended there should be issued from time to time bills of credit sufficient for the annual support and service of the government" (2 Prov. Laws, 845). The charge was substantially true, but cannot excuse the Province, however culpable the crown may have been. The Province persisted in trusting the crown; the crown persisted in proving that it should not be trusted. The crown succeeded; with some reluctance the Province accepted the situation.

Health, Schools, Fire Department, Police, Lighting.

As the city charter of 1822 vested all health and quarantine matters in the city council, it was not strange that the Province made the selectmen a board of health (1 Prov. Laws, 469). The Colony had done the same, whereupon the selectmen of 1678 ordered that all persons that had the smallpox should not air their clothes and bedding "except it be in the dead time of the night" (7 Bost. Rec. Comm., 119). The selectmen of the Province period were expected to deal with "the plague, smallpox, pestilential or malignant fever, or other contagious sickness, the infection whereof may probably be communicated to others" (1 Prov. Laws, 469). As the selectmen could not enforce their will, least of all when an appeal was taken to the famous court of sessions, any two justices of the peace were authorized to issue a warrant enforcing the regulations of the selectmen in this business. It was held later (l. c., 487) that the two justices, acting upon the advice and direction of the selectmen, could order the forcible removal of smallpox patients. Rainsford island became the quarantine hospital, and woe to the vessel that had smallpox on board. In 1772 a schooner arrived, with a boy on board who had had the smallpox, but had recovered and been well for ten days. The boy, the captain, the crew, the passengers, and the vessel were smoked with "rossom and brimstone," also "washed and cleansed," whereupon the officer at Rainsford thought they might be dismissed. The selectmen replied: "Our orders are that you continue to use the proper means for cleansing the schooner, and everything on board, as well as the people. With respect to the captain and the two passengers, you must take particular care as to their washing and cleansing. Those of them who have any hair must wash the same well with vinegar. Their clothes, especially the suits they are to come up with, must be aired, washed, and smoked as

carefully as possible. And when this is done, report to us again." After much more smoking, washing and cleansing, the keeper was allowed to let the schooner go, "first taking care that you are paid for your trouble" (2 Bost. Rec. Comm., 135–8).

Not, perhaps, to strengthen the power of the selectmen as a board of health, but to fight the smallpox, the most dreaded of all epidemics in Province times, the General Court repeatedly supplemented its "Act providing in case of sickness," passed in 1701–2. In 1739 persons arriving in Boston from any place "where the smallpox or other malignant infectious distemper is prevailing,"—the act referred to places "in the neighboring provinces" only,—were required to report to the selectmen, and the selectmen had full power to warn such persons out of the Province (2 Prov. Laws, 987). The fine of neglectful travellers was £20. In 1742–3 families with a case of "pestulous eruptions" were required to inform the selectmen, and to display a red flag, under a penalty of £50 in either case, £25 to go to the informer (3 Prov. Laws, 35). Inoculation was prohibited by the act of 1764, unless thirty families suffered from the smallpox, and the selectmen permitted inoculation (4 Prov. Laws, 668). As the laws of the General Court did not stop the dreaded malady, another act was passed in 1764, fining country people £100 for going to Boston and being inoculated there (l. c., 729). On July 4, 1776, the court of sessions was authorized to permit the establishment of inoculating hospitals, and to punish private inoculation with whipping (5 Prov. Laws, 552). At that time the people of Boston were frantic; their town was nearly empty, it was without a reasonable supply of food, trade had ceased, the epidemic was commonly thought to have been occasioned by the British soldiers, and the selectmen had neither money nor skill to meet the case. From April 3, 1775, to March 29, 1776, no town meeting was held in Boston; the selectmen's meetings were interrupted for more than a year. When they were resumed, the absence of British soldiers was duly noticed; also "the present opportunity of transacting the affairs and business of the town in a free town meeting" (18 Bost. Rec. Comm., 227); nobody believed for a moment that the town or the Province had lost any wisdom supposed to dwell with kings; nobody imagined that, in case the Massachusetts health laws were bad, better laws could be framed upon a hint from the mother country. Even a crown that in theory never does wrong, cannot convey those ideas of which it is not previously possessed. The Province did not know that epidemics are more

than a town affair; perhaps a later age will learn that they are more than a State matter. Towns were justly required to take care of their prudentials; to make their selectmen a board health, and the only guardians of the public health, quarantine included, was to impose imperial duties upon a municipal corporation. As well might a town be required to regulate the coinage, or to provide original standards of weights and measures. The distribution of power in public-health matters is not much better in 1893 than it was in 1776 or 1692.

In the matter of schools, the Province inherited the admirable law and practice of the Colony, which was fortunate in providing for Harvard college and for secondary education, before reading and writing schools were established. For it seems that primary schools depend more on the higher schools than the latter depend on the lower schools. For this reason it was a happy law that required for all grammar-school masters the approval of at least two ministers. A grammar-school prepared directly for college, and ministers represented liberal learning better than any other profession. Free trade in teaching being prohibited, Provincial Boston was saved from the self-appointed professors that profess more than they make good. In 1768 the law authorized the establishment of school districts within towns, such districts or precincts being allowed to order a higher tax for school purposes than the town at large was disposed to levy. This interesting law was the beginning of a policy under which the schools and their management have become a separate establishment, and rather independent of the general town or city government. The management of the schools rested with the selectmen; but as early as 1710 the practice of choosing eminent men for the inspection of schools was formally adopted by the town (8 Bost. Rec. Comm., 65). In 1724–5 the selectmen began the custom of annual school visits, to which eminent men were invited, the affair ending usually with a dinner (13 Bost. Rec. Comm., 134, 153, 242, 254). This custom continued long after the establishment of the school committee and until Boston had become a city. The Province law did not greatly affect the Boston schools (Prov. Laws, I, 63, 470, 681; II, 100; IV, 988); they were founded in the affection and liberality of the people, who never wavered in this attachment.

The fire department of Provincial Boston continued under the management and control of the selectmen; but in 1721 the management of fires was placed in the hands of ten firewards, who were appointed by the selectmen and the justices of the peace (1 Prov. Laws, 677). In

1745 the town was allowed to appoint its firewards (3 Prov. Laws, 214), and as they gave satisfaction, their number was gradually increased to sixteen (4 Prov. Laws, 661). The fire engines were manned by volunteers, and the engine "first brought to work upon any building on fire" received a premium; but the engine men and their captains were appointed by the selectmen. The fire service was always popular, and the frequent recipient of favors. In 1772 John Hancock gave the town "a new and finely-constructed engine (imported) for the extinguishing of fires;" it was apparently the tenth; it was named in honor of the donor, who was requested to name the captain of the company; and in case of fire the Hancock engine was instructed to give "the preference of its service" to the Hancock estate (18 Bost. Rec. Comm., 86, 88; 23 Bost. Rec. Comm., 162). To prevent fires, the Province continued the Colony law of 1683 that no building should be put up in Boston, "except of stone or brick, and covered with slate or tile" (5 Mass. Rec., 426; 1 Prov. Laws, 42). Wooden buildings required the consent of the selectmen, the justices of the peace, and the governor and council (1 Prov. Laws, 42, 404). In 1760 a similar law was passed, but the same law excused all previous offenders, provided they would cover their buildings within ten years with slate or tiles (4 Prov. Laws, 380). By a certain irony the building, fire, and street-widening laws of Boston under the Province are commingled; and had it not been for its many great fires, both under the Colony and the Province, the amounts the city of Boston has expended for street widenings, great as they are and will be, might have been double or treble. The fault lies with the founders, who distributed the territory of Boston, and then tried to give each lot owner some kind of access to his property, always at the expense of others who were entitled to damage. The wonder is, not that the streets of the peninsula are irregular and narrow, but that the officers of the town and city have contrived, against disadvantages not experienced in any other civilized community, to make the streets we have. The great fires of Boston have helped, and the selectmen of Provincial Boston took full advantage of every fire that ravaged the town. These fires, it appears, were not prevented by building laws of Spartan rigor, nor by maintaining a fire-engine company for every five hundred or one thousand inhabitants. The best laws, and the best government service, cannot prevail against private indifference. A free community must delegate many rights; it cannot delegate responsibility, and be safe.

The Province authorized Boston, in 1761, to establish a town police (4 Prov. Laws, 462). The theory had been that the town constable was the town policeman, that the constable might have officers to help him, and that where the constables proved insufficient the Colony or the Province must act, and that they would act by the militia. The theory broke down, because neither the Colony nor the Province was prepared or disposed to maintain a standing militia. After the theory had failed, the town of Boston was permitted to make what police arrangements it could. The chief difficulty was the cost. Well might the Province shrink from the cost of a police force for all Massachusetts; but even a rich town that raised by lotteries the money required for paving the way to Roxbury, or for rebuilding Faneuil Hall, would have great difficulty in maintaining a standing police force such as it needed. In truth, the police of Provincial Boston was wretched. The first militia act of the Province, passed in 1693, provided for military watches, that is, for such night duty of the militia as the chief military officers of the town might order; and all males from sixteen to sixty years of age were liable to serve (1 Prov. Laws, 128). Of course, nobody was anxious to serve as night watchman, and pay his own expenses. In 1699, therefore, all towns were authorized to employ a night watch, with or without pay; but in case the watch was paid, the cost was assessed upon the ratepayers by the court of sessions (l. c., 381), although the law admitted the watch to be for the benefit and safety of the town, and the justices were not town officers. The act provided for a watch by night, and for a ward by day, including Sundays; and to that extent marks the end of the constables' watch together with the constables' character as general peace officers. The stately German marshal, and the French constable of higher rank, became in Massachusetts a beadle. And before the Province gave the authority, the town of Boston employed ten watchmen, to protect the inhabitants better by night than the constables did by day (7 Bost. Rec. Comm., 231). To distinguish the new watch from the constables' watch and the bellmen (so called because they carried a bell to alarm the town in case of danger), the term "select watch" was used, the men being specially chosen or selected. In two years the new watch cost £265 per annum, and the amount was raised by special assessment (l. c., 232, 241, 243).

In 1712, when Boston assumed the character of a provincial metropolis, its watchmen were given the powers of a modern police officer (1

Prov. Laws, 699). On the whole, the arrangement worked well; it remained for a century and a half. When the British soldier came, to overawe revolutionary Boston, not only was the number of watchmen increased, but they received a new and efficient ally. In the annual town meeting of March 10, 1772, the town was asked to consider "the expediency of fixing lamps in proper parts of the town, for the better accommodation of the inhabitants." As usual in such cases, the matter was referred to a committee. The committee recommended that three hundred lamps be put up, that the first cost be met by private subscription, and that the new department be maintained from the general tax levy. The lamps were bought by John Boylston in London, their cost was about five shillings sterling each, and within a year three hundred and ten street lamps were put up in all parts of Boston. Meanwhile the General Court had passed a good act giving the proceeding the approval of law, and expressing the reasonable belief that the street lamps would help to prevent "fires, burglaries, robberies, thefts, and other lesser breaches of the peace" (5 Prov. Laws, 302; 18 Bost. Rec. Comm., 72, 115, 128, 135, 162–5). The intentions of the Province were that Boston should enter the Commonwealth properly lighted, and with all the appointments of a capital city. It had found the town unpaved, unlighted, and unguarded; it left Boston well paved, well lighted, and well protected. The town might have answered that it owed the Province very little, that it was in debt, that its streets were deserted, that a smallpox epidemic was more ruinous than a foreign army, and that the court of sessions had not been abolished. On one point Boston and Massachusetts were of one mind—that almost anything might be suffered to secure a free Commonwealth and a free town meeting. As soon as these were established—greatly surpassing the liberties of the ancient Colony—the miseries and shortcomings of the Provincial period were mercifully forgotten. Boston saw its darkest days in 1776: but the Boston of 1776 looked forward, and moved bravely onward.

The main sources for the constitutional and government history of Boston under the Province, from 1692 to 1776, are the "Acts and Resolves of the Province of the Massachusetts Bay," admirably edited, especially by A. C. Goodell, jr., and published by the Commonwealth of Massachusetts, 6 vols., Boston: 1869–92; and volumes 7, 8, 12, 14, 16, 18, also, 11, 13, 15, 17, 19, 20, and 23 of the Boston Record Commissioners, published by the city of Boston.

COMMONWEALTH PERIOD OF THE TOWN, 1776 TO 1822.

The sources for the government history of Boston from 1776 to 1822 are not easy of access. The State laws, especially for the earlier part of the period, were not well printed, and are rarely found in a complete set. The Secretary of State has begun to reprint them from 1780 to 1806. For many purposes the edition of the General Laws, from 1780 to 1822, edited by Metcalf, will suffice (Boston, 1823, 2 vols., 8vo.). The special laws for the same period have been published in five volumes, and exceed the general laws in local interest. The town-meeting records for the period exceed in bulk the entire period from 1634, when they began, to 1776, being the larger part of the ten volumes in the custody of the Boston City Clerk. The records of the town meetings are printed up to 1778. Of the twenty-three volumes containing the minutes of the selectmen, from 1701 to 1822, the publication ends in vol. 15, with April 19, 1775. The records of the school committee, the assessors, and of a miscellaneous nature, are all in manuscript. Those in the possession of the Overseers of the Poor are important, as they cover a constitutional conflict between the town or city and the board. The records of the court of sessions are in the office of the clerk for the Supreme Court of Suffolk county. The town printed much, and most of this is lost. But the editions of the By-Laws issued in 1786, 1801, and 1818, are useful, as each undertook to give all the bylaws and the important acts of the General Court relating to Boston. The edition of 1818 is specially helpful. For the period from 1776 to 1780, when the Massachusetts Constitution was adopted, the fifth volume of the Province Laws, edited by A. C. Goodell, Jr., is a storehouse that supplies everything, as far as the General Court is concerned. Of private writers on the government of Boston from 1776 to 1822, Josiah Quincy's "Municipal History" is interesting, in that it rests largely upon direct knowledge. He had been the orator of Boston on July 4, 1798. From 1823 to 1828 he was mayor.

Suffolk County.

In 1733 the Boston Town Meeting presented elaborate reasons why Suffolk county should not be reduced, and why Dedham in particular should not be set off (12 Boston Rec. Comm., 50). When the Province became a State, Suffolk county comprised twenty towns: Boston, Roxbury, Dorchester, Milton, Braintree, Weymouth, Hingham, Dedham,

Medfield, Wrentham, Brookline, Needham, Stoughton, Stoughtonham, Medway, Bellingham, Hull, Walpole, Chelsea, and Cohasset. The county was more than a district for the administration of justice: it had large executive powers over each town, as Boston knew to its sorrow. The bill of rights had laid down the principle that "in the government of this Commonwealth . . the judicial [department] shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws, and not of men." This principle, best vindicated by John Adams, was violated in Boston throughout the period under discussion, the county judges having the veto power over all town bylaws, the power to grant liquor licenses, the assessment of county taxes, the appointment of certain local officers, the permitting of Sunday funerals, the right to discontinue highways, and the locating of distilleries, potteries, and slaughterhouses. The county, to which their jurisdiction extended, was large, and Boston in particular kept the court of sessions busy. Boston had always wished to be a separate county, and in 1793 Norfolk county was established, taking every Suffolk town, except Boston and Chelsea (1 Gen. Laws, 423). It was found proper to restore Hingham and Hull to Suffolk (l. c., 426); but in 1803 they were set off to Plymouth county (2 Gen. Laws, 80). Suffolk county, then, was reduced to its smallest size, which remained until 1804, when South Boston was added. The next addition to Suffolk, of Roxbury, was not made until 1868. When Norfolk county was established in 1793, it had more inhabitants than Suffolk. In 1790 Suffolk County had a population of 44,875, of whom 18,320 were in Boston. Of the total 23,878 were set off to Norfolk county, and 20,997 remained in Suffolk, including Hingham and Hull. In 1820 Suffolk county had a population of 43,890, against 36,471 in Norfolk county. The population of Boston, in 1820, was 43,298.

It is not clear whether the authors of the Massachusetts Constitution and the General Court considered the justices of the peace and the court of sessions executive or judicial officers (Constit., part ii, ch. iii, art. 3; amendm. 8). It is certain that they did both judicial and administrative work, and natural that neither was well done. The Constitution of 1780, which is still in force, provided that judicial officers should serve during good behavior, but excepted justices of the peace, on the ground that they might fail to discharge the important duties of their office "with ability or fidelity" (Const. of Mass., III, 1 and 3). Accordingly they were appointed for seven years. Their authority, in

the period under discussion, was great. In 1784 the General Court authorized them to determine civil causes up to twenty dollars, and expressly took such cases away from the Court of Common Pleas, save in appeal (1 Gen. Laws, 123). In 1808 the act was renewed (2 Gen. Laws, 184). Their criminal jurisdiction was even more extensive, as all offenders were supposed to be brought first before a justice of the peace (1 Gen. Laws, 133). Fines for the violation of town and other laws were imposed by justices of the peace, who accounted for these fines annually to the town, county, or State treasury concerned. The justices were paid by the fees they collected. In addition, they exercised executive power, as a sort of check upon the selectmen. Most of the justices of the peace were laymen, and their judicial work was not good. Accordingly all civil jurisdiction was taken away from them in 1822, in the act that formed part of the city charter (2 Gen. Laws, 585).

The justices of the peace together formed the court of sessions, which had original jurisdiction in criminal matters. But the act of July 3, 1782, which continued the Province court of sessions (1 Prov. Laws, 367), omitted the quorum clause that required certain justices, or any one of them, to make the proceedings in the sessions complete. An appeal lay from the court of sessions to the Supreme Court (1 Gen. Laws, 68). The act of June 19, 1807, required the court of sessions for Suffolk county, at that time one of the smaller counties, to consist of a chief justice and four associates (2 Gen. Laws, 171). This ruled the justices of the peace out of the court they could not dignify, and the members of the court were relieved of the duty, previously exercised, of assisting in the administrative work of laying out or discontinuing highways. None the less the court of sessions was abolished in 1809, and its power transferred to the Court of Common Pleas, which thus became a court with administrative duties attached to it (2 Gen. Laws, 208); but in 1811 the court of sessions was revived, and continued until Boston became a city (l. c., 295, 587). Its administrative power was then transferred to the mayor and aldermen, at that time one board. The criminal jurisdiction was transferred to the police court, of three judges, who sat also as a justices' court, and as such inherited the entire civil jurisdiction previously vested in justices of the peace. It was the commingling of purely administrative work with judicial duties that impaired the usefulness of the ancient court of sessions. In town matters the court of sessions or the county justices, all paid by fees, could check many things the town or its selectmen

were ready to do; and a judiciary living on fees was not likely to win confidence. A court without the confidence of the community is a failure where failure is most unfortunate.

To give relief, especially in prosecuting the violations of town laws, the General Court established, in 1800, the Municipal Court of Boston (2 Gen. Laws, 26). It consisted of a salaried judge, who had the same criminal jurisdiction as the court of sessions, and was to take special "cognizance of all crimes and offenses against the by-laws of the town." In addition, the town was authorized to choose annually a town attorney, who was to prosecute in behalf of the town, and was allowed a salary. In 1813 the original jurisdiction of this Municipal Court was extended to all crimes in Suffolk county; meantime the town attorney had become a county attorney (l. c., 328, 172). The field of the court of sessions was thus encroached upon in every direction, until in 1822 the anomaly of having a sort of lay court for judicial and executive work was got rid of, to the profit of the law courts and the administrative interests of the town. The higher courts, being the Court of Common Pleas and the Supreme Court, had law judges only, and worked well. The Court of Common Pleas heard civil cases involving more than forty shillings (1 Gen. Laws, 67); and in 1814 the Boston Court of Common Pleas was authorized to try minor cases without a jury (2 Gen. Laws, 352). This was called the Town Court, which became a separate court in 1818 (l. c., 444), held by a special justice of the peace. The town judge for civil actions, together with the Boston Court of Common Pleas, which had added to its duties the hearing of certain criminal matters, was swept away by the act of February 14, 1821, establishing a Court of Common Pleas for the Commonwealth (l. c., 551). This court was to become, in 1859, the Superior Court.

The main reason why Boston became a city is not so much the fact that the town had become too large for a government by town meeting, selectmen, and other town officers, although this reason was strong, as the very serious fact that the town suffered because the county authorities, especially the justices, failed to do well what town business was by law entrusted to them, and because the administration of justice was bad, especially where the violation of town laws was involved. On December 10, 1821, a report commonly attributed to Lemuel Shaw, who was Chief Justice of the State from 1830 to 1860, urged the town to become a city for the double purpose of improving the administration of justice and the prudentials. In support of the

former this language was used: "The present mode of administering justice in its first stages is attended with many growing abuses; and though they have already attained to a very considerable extent, they must, unless prevented by an entire change in the system, produce eventually the most mischievous and immoral consequences." The report demanded two acts of the General Court, the town joined, and it is chapter 109 in connection with chapter 110 of the acts of 1821—both were signed on February 23, 1822—that made Boston a city, with some approach to autonomy, and without a court of sessions. The General Court reserved the right to annul bylaws made by the town; but that was relief from the approval previously vested in the court of sessions. The town meeting was reluctant to ask for its own extinction; the question whether the court of sessions should be abolished, received the support of 4,557 votes, with but 257 opposed (Quincy, Munic. History, 33). The people of Boston were not convinced that town government was a failure; they were convinced that the commingling of town business with the administration of justice was a mistake the consequences of which were as unfortunate as they were notorious. Had it not been for the hope of establishing justice in town matters where a court alone could establish justice, and where the justices of the peace, jointly and severally, had failed to establish so much as reasonable justice, the town would not have voted, on January 7, 1822, that the "Town of Boston" should be changed to the "City of Boston." The proposals of 1784, 1792, 1804, and 1815, while favoring the adoption of a city charter, had failed to ask for reform where it was most urgently needed. This reform came in 1822, when Boston was made a city, in order that the judiciary should not exercise legislative and executive powers, or either of them. The city of Boston would have fared better still had the thirtieth article in the Declaration of Rights been applied in its full meaning and in all its consequences to the instrument known as our first city charter. But the charter was a great step forward, in that it limited and defined executive and judicial powers for the city of Boston and its government.

Area and Population of Boston.

In Colony and Province days it was customary to speak of Boston "within the neck," meaning the peninsula on which the capital of Massachusetts is situate. This peninsula consisted of several parts. The old north end was separated from the centre of the town by a navigable

creek or canal, since changed to Blackstone street, which was not built until after Boston became a city. Originally this canal was about six hundred feet long, the present Haymarket square and the junction of North and Blackstone streets being covered by the tide. The easiest road to Charlestown ferry was through Sudbury street, which is also the earliest street in Boston with a definite name attached to it (7 Bost. Rec. Comm., 3). The streets through the old north end to the Charlestown ferry were built later, and at great expense. The strip of land that connected the peninsula proper with Roxbury and the main land, was about two hundred feet wide at the present junction of Washington and Dover streets. But the territory of Boston extended beyond, the boundaries toward Roxbury being two creeks that emptied respectively into the Back Bay and the South Bay (11 Bost. Rec. Comm., 80). Kendall and Arnold streets were in Boston, but the south end (south of Dover street) was not generally settled until after Boston had become a city. Boston west of Sudbury street, at that time called New Boston, was not generally occupied until the latter part of the Province period. Boston had become a narrow town as early as 1740, for East Boston failed to attract population until quick and sure communication by steam was established. The necessity of more room was felt as soon as Boston recovered from the ravages of the Revolution. By 1790 it had 18,038 inhabitants, not counting the islands. In 1800 this population was 24,655; in 1810, 32,896. In 1820 the population of Boston proper, not counting East Boston, South Boston, and the islands, was about 42,000. For the accommodation of such a population the old peninsula proved insufficient. Charlestown offered some opportunity for relief; but communication with Charlestown was not easy, it was an independent municipality, and the system of separating the business and residence sections of a community had not forced itself upon attention.

Some relief was had by the great bridges built in the period under consideration. The first of these was the Charles-River bridge, from the foot of Prince street to Charlestown, opened to travel on June 17, 1786. On November 23, 1793, the great bridge from the foot of Cambridge street in Boston, to Cambridge, was opened to travel. Until these great works were achieved, the only bridge over the lower part of Charles river was the "Great Bridge," from the foot of North Harvard street, in Brighton, to Cambridge (4 Mass. Rec., part I, 470; 1 Prov. Laws, 158, 383). It was first built in Colony days, apparently in

1662, and as late as 1833 the towns of West Cambridge (Arlington) and Lexington petitioned the General Court that they might be relieved of contributing toward the support of this interesting structure, which for more than a hundred and thirty years was the only highway connecting Boston with Cambridge, except by the Charlestown route. From Boston the bridge was reached via Roxbury and Brookline. The bridges of 1786 and 1793 made travel easier, but did not relieve the growing population of Boston. For this purpose South Boston, known as Dorchester Neck, was transferred, in 1804, from Dorchester to Boston. South Boston now covers 1300 acres; in 1804 it covered less than half that area. But a bridge to South Boston (now Dover street bridge, originally the Boston South bridge) was opened to travel on August 6, 1805 (3 Spec. Laws, 368, 371), and a second bridge was immediately proposed. Before this was built, it was found best to encroach upon the South Bay by filling the area south of Beach, and east of Washington street (l. c. 375). This district is called the South Cove. The land so won from the sea retarded the settlement of South Boston, which had about two hundred inhabitants when annexed to Boston, and less than two thousand in 1820, though it had the second Catholic church in Boston. An addition of greater importance than the South Cove, for the immediate relief of the population, was the filling of the ancient Mill Pond, at the north end. This pond was made in 1643–46, by constructing a causeway or mill-dam along the present Causeway street, from Leverett to Prince street. The pond was roughly triangular, the base, along the causeway, being about two thousand feet, and the distance from the causeway to the point where a canal connected the mill pond with Boston harbor about fourteen hundred feet. The present Haymarket square was part of the mill pond. This territory was filled in 1807–22, and is still indicated by the names of North Margin and South Margin streets (2 Bost. Rec. Comm., 74; By-Laws of 1818, p. 204). As early as 1693 there were three mills where the sluice connected the mill pond, or mill cove, with Charles river, and two mills where the pond was joined by the canal to Boston harbor (map in Boston city doc. 119 of 1879). The filling was taken from Beacon hill; the streets of the Mill-pond district were laid out by Charles Bulfinch, who was the leading man in town improvements for the period under consideration (Quincy, Mun. Hist., 26). From 1791 to 1817 he served with but one interruption as selectman, and most of the time as superintendent of police. The arrangements for filling the old mill pond were as admirable as was the skill that first de-

vised the pond, with its double supply of water and power from the north and the south. The similar enterprise of using the Back Bay was planned on the like principle, and finally led to like results,—a large addition to the area of Boston by encroachments upon tidewater. The milldam from the junction of Charles and Beacon streets to Brookline was first proposed in the town meeting of June 11, 1813. On October 20, 1813, the town meeting accepted the committee report recommending a large grant of flats on condition that the grantees build the dam named, with proper sluice ways for mill purposes, and a second dam, of similar character, to South Boston, as well as a canal from the South Bay to the Back Bay, the canal to be near the present Dover street, and to supply mill power (By-Laws of 1818, p. 219). An act in this sense was passed by the General Court (5 Sp. Laws, 17, 136, 331). The South-Boston dam and the canal across Washington street were not built; the milldam to Brookline (Beacon street) was opened to travel on July 2, 1821. When the filling of the north cove was complete, the filling of the Back Bay began; about that time Boston adopted a city charter. The palm for enterprise appears to belong to Henry Simons and the grant of 1643.

Right of Settlement and of Voting.

The town code of 1786, p. 108, continued the bylaw prohibiting strangers from making Boston their home, except under a permit from the selectmen; persons acquiring a freehold, and apprentices, had permission to settle in Boston. The code reprinted the law of 1700–1 (1 Prov. Laws, 451), under which nobody could vote in town meeting without the consent of the selectmen or the town; but natives, freeholders, and apprentices were excepted. Immigration was carefully restricted, and strangers could not be entertained in Boston, even by their relatives, for more than twenty days, unless the facts were reported to the selectmen in writing. The pertinent law of 1736–7 (2 Prov. Laws, 835) was reprinted in the town code of 1786, p. 113. The Constitution of 1780 (ch. I, sec. II, art. 2) undertook to define an "inhabitant," but left the right of admitting inhabitants as before, that is, to the towns and the selectmen. Technically, then, nobody had the right of domicile in Boston, except natives of the town, freeholders, apprentices, and persons admitted by vote of the selectmen or the town. This admission must be formal and explicit, and without this formality the right of domicile or "inhabitancy" could not be acquired

(4 Prov. Laws, 912). The Constitution recognized only the fact of actual residence. In 1789 a law defined "the settlement of a citizen in any particular town" (1 Gen. Laws, 366). The term citizen was new, not being found in the Constitution of 1780, save incidentally and in the sense of resident. The Constitution called citizens "subjects." At first the term "citizen" was used as an equivalant for inhabitant, or legal inhabitant. Before long the national government took charge of this subject, and citizenship was conferred, not by selectmen, nor by the Commonwealth, but by the United States. The State regulated the rights of domicile and suffrage, also the right of settlement, with its implied right to poor-relief.

The laws of citizenship and settlement were substantially one in Boston until Congress passed its first naturalisation act, in 1795. Up to that time citizenship, or "inhabitancy," was the prerequisite to voting as well as to poor-relief. For a short time Massachusetts naturalised, but could not grant inhabitancy. When citizenship became a national affair, there was nothing in the premises left to the town, except to prevent the settlement of persons likely to need relief. But a settlement could be, and can be, acquired without citizenship. The old law of settlement, which had been inherited from the Colony, and had added greatly to the power of the town, thus passed away, leaving behind it the mean duty of protecting the town from paupers, while the inestimable right of citizenship was conferred by the United States. Boston had become part of a sovereign nation, and the nation decided who should be admitted to the enjoyment and exercise of national power. The Colony had freemen, that is, members of the company; the Province had freeholders, or owners of land, which conferred the rights of a British subject; the United States conferred citizenship, which was the first step to the highest rights the people of the United States as a body politic could confer. Surely, a new era had begun; the great Revolution yielded great results; the town of Boston had become part of a national partnership. It was to learn this in other directions, and to reap additional benefits.

No religious test was prescribed by the patent of 1629. The Colony was true to this silence, except that in 1654 it required the members of the General Court to be "orthodox Protestants" (Col. Laws, 1660, ed. Whitmore, 145), and that violent laws against Quakers were enacted. The responsibility for these violations of the patent (1 Mass. Rec., 16) rests wholly with the Colony (see the laws of 1660, ed. Whitm., 154–6).

In part the action of the Colony may be explained by the fact that self-preservation was the paramount duty of the Colony, and that it was more important to save Massachusetts than to engage in untried experiments of toleration. The Province charter provided that "there shall be a liberty of conscience allowed in the worship of God to all Christians, except Papists" (1 Prov. Laws, 14). In 1700 all Roman Catholic priests were specially prohibited from living in the Province (l. c., 424), and the law remained in force until the Constitution of 1780 (part II, ch. VI, art. 6). The Colony did not and could not prevent the Society of Friends from establishing itself in Boston. The first Catholic church in Boston was not built until after the beginning of this century, though Catholics began to arrive after the Constitution of Massachusetts had replaced the Province charter. The declaration of rights (art. 2) established freedom of conscience and freedom of worship, though the next article authorized town taxes for the support of "public Protestant teachers of piety, religion, and morality." This authority was taken away by the eleventh amendment, in 1833. The oath that no foreign person hath, or ought to have, any authority in any matter, ecclesiastical or spiritual, within this Commonwealth, had been replaced, in 1821, by the simple oath of allegiance. Nor were the members of the General Court required, after the amendments of 1821, to declare the truth of the Christian religion. The era from 1776 to 1822, then, saw something like emancipation from the political test of creed, as far as Massachusetts was concerned. The United States did not tolerate a test of its officers' religion, and made the free exercise of religion the supreme law of the land.

The difference between town and state suffrage was continued, town suffrage being the more liberal of the two. The Province had never defined the qualification of voters as to age and sex. The Constitution of 1780 expressed the practice of the Province period, limiting the right of voting in State matters to males at least twenty-one years of age. The property qualification was either a freehold yielding three pounds a year, or any estate worth sixty pounds. This was virtually an adoption of the Province charter requirements, the Massachusetts pound consisting, ever since 1652 (3 Mass. Records, 261–262), of three ounces of silver 37-40 fine. It was customary to treat two pounds sterling as equal to three pounds of this Massachusetts money of account. As a curiosity it is worth stating that the Massachusetts Constitution recognized silver money only (part II, ch. VI, art. 3), while the Province

law was bimetallic in ordering the new-tenor bills of credit. In addition to the sex, age, and property qualifications, which controlled to 1821, the voter must be a legal "inhabitant" or formally admitted to the town in which he claimed the right of suffrage. This inheritance from the Colony, which was a close corporation, was done away with in 1821, when the third Amendment of the State Constitution required all voters to be male citizens, residing in Massachusetts, who had paid a tax. In town matters the General Court gave the suffrage, in 1782, to "every person who is an inhabitant within any town in this Commonwealth, who shall pay to one single tax, besides the poll or polls, a sum equal to two-thirds of a single poll tax" (1 Gen. Laws, 62). The general town act of 1786 retained this provision, but replaced the term "every person" by the phrase "the freeholders and other inhabitants of each town in this government" (l. c., 250). The act of June 18, 1811, required town voters to be male citizens, at least twenty-one years of age, of at least one year's residence in the town, and to have been taxed (2 Gen. Laws, 279). The city charter (sec. 8), finally, adopted for municipal purposes the same requirements of voters as the amendment of 1821 required in State elections.

At last, then, the difference between town voters and voters for State affairs was to disappear, but not while Boston remained a town. While Boston was a town, the selectmen decided who should vote, though in town meeting the moderator had control. In deciding who was a voter, the selectmen had the assistance of the assessors, who were required by the law of March 7, 1801, to make regular lists of voters (2 Gen. Laws, 44, 72). This list was perfected by the selectmen, but had reference to State elections only. In 1813 the assessors were required to make also a list of "all such inhabitants as may be qualified by law to vote in the choice of town officers" (l. c., 341). The same law introduced the system of checking at all elections. The city charter required the board of mayor and aldermen to make the voting lists (sec. 24). The active and passive right of suffrage in town matters was substantially one since the general town act of 1786 (1 Gen. Laws, 250); in State matters more was required of voters, and still more of persons voted for. The town, therefore, was more democratic than the State. It had been so ever since Colony times, and traces of this are still found. Among State officers the law recognizes rank; in town matters rank never counted for much. The idea of manhood suffrage, however, was unknown to the age under discussion. On the other hand, the town

of Boston under the Commonwealth began with complicated restrictions of suffrage, and ended in 1822 with simple and obvious requirements upon the citizen voter. The progress made was altogether in the direction of simplicity and equality. No wonder the people were attached to their own town meeting, where they had rights unknown in State matters. The town was the nearest approach to a democratic republic known to the men of Boston in 1822.

Police Department.

For the better order of the town, Boston introduced street lamps just before the end of the Province; in part also to help the night watchmen who had to look after the British soldiers. When the soldiers left Boston, and the people returned to their own—they came in thousands—a day patrol was found necessary to maintain reasonable order. Some years later the first "inspectors of the police" were appointed, and the interesting ordinance authorizing a permanent patrol still stands in the town code of 1786, p. 66. The police department, then, began in 1786; but the old night watch was retained as a separate service until 1854. The force appointed in 1786 consisted of four "inspectors of the police," the term police having reference to the good order of the town, not to the men appointed for that purpose. The term was new, it had not gone into the dictionaries, and at best a student would write of "well-policed states," meaning well-ordered states (18 Bost. Rec. Comm., 133). Howell used a similar expression in 1642, but the word was as foreign to the people of Boston in 1786 as the terms bi-cameral or physiological psychology are today. The "inspectors of the police" were ordinary patrolmen, subject to the selectmen, by whom they were appointed. A patrolman was required to report to his superiors once a week. Of course, the arrangement failed. Patrolmen who received their instructions from any one of the nine selectmen were obliged to consult their own judgment, and free to consult their own convenience. Promptness and responsibility in administration are not compatible with committee rule. A committee means the absence of individual responsibility in administration. In addition it means delay, lack of discipline, and want of executive force.

Experience led to a change. The selectmen were authorized to "elect one suitable person to superintend the police [good order] of this town" (By-Laws of 1801, p. 33). The selectmen chose their own

chairman, Charles Bulfinch, a good man, who served from 1799 to 1817, when he was succeeded by Jeremiah Freeman. In 1820 Caleb Hayward was appointed. The "superintendent" was required to patrol the streets in person. In case the work was too much for him, the selectmen were authorized "to appoint, from time to time, such and so many assistants to the superintendent as the business of the office may be found from experience to require" (By-Laws of 1801, p. 33). This arrangement remained until Boston became a city, and the city charter vested "the administration of police" in the mayor and aldermen. The term still meant, in the language of the old ordinance, the administration of "the by-laws of the town, and the laws of the Commonwealth, which especially relate to the good order and government of this town," the purpose being that these laws and by-laws might be "carried into effect with energy and promptness" (l. c., p. 33). It took a long time to produce the modern term "police" and the establishment so designated. The Colony began with a constable; a constables' watch was added; the next step was the watch and ward as recognized by the law of 1699; in 1761 Boston was graciously permitted to hire and pay its own watchmen, the General Court claiming the right to regulate some things the General Court did not pay for; in 1786 Boston began to employ a regular day police; and in 1799 the police department was complete, if not perfect. Even the term, "superintendent of police," was revived in 1878, after it had done duty from 1799 to 1823. The Boston police department, then, is not of provincial origin. It was the first executive department to rise in Boston after Massachusetts had become a State.

The Public Schools.

The province did not prove a great benefactor to schools. The most illustrious name in the history of the Boston town schools belongs to the Colony age. The same age boasted of three schools supported by town taxes (7 Bost. Rec. Comm., 187); the visitors of 1772 reported that they found the five schools of the town to have 941 pupils, of whom 199 were in the grammar or Latin schools, and 742 in the three writing schools, which ranked with our later grammar schools. Girls and young boys were not admitted. The girls were all taught in private schools; the rudiments of reading and writing were supposed to have been picked up by the boys before they entered the town schools. Yet there was no free trade in private schools. The system of town schools

began from the top. Under the Commonwealth it was that the town of Boston admitted girls to its public schools, that primary instruction was first supplied at the public expense, and that the English high school was established for such children as wanted a practical education without preparing for college. George B. Emerson was the first master of the "English classical school," as it was called. Independence brought a certain largeness of speech that has never been wholly effaced. But the school system was made democratic. At the same time it slipped away, though gradually, from the selectmen and their successors. Today the public schools of Boston have a government of their own; the City government simply supplies the money. The government of the schools is vested in the School Committee. The first School Committee, as the term is now understood, was chosen October 20, 1789.

This School Committee is a Boston invention. Up to 1789 the selectmen had the management of the schools. In 1789 the management passed to the School Committee consisting of the nine selectmen and twelve persons chosen by the town. The School Committee was the accidental outcome of the annual committee that used to visit the schools once a year, and then dined with the selectmen at Concert or Faneuil Hall. This visiting committee was recognized by the Massachusetts school act of June 25, 1789: "No person shall be allowed to be a master or mistress of such [primary] school, or to keep the same, unless he or she shall obtain a certificate from the selectmen of such town or district where the same may be kept, or the committee appointed by such town, district or plantation, to visit their schools, as well as from a learned minister settled therein, if such there be, that he or she is a person of sober life and conversation, and well qualified to keep such school" (1 Gen. Laws, 370). Much more was required of the teachers in the high schools, then called grammar schools; and all teachers were wisely required to be citizens of this or some other of the United States. Possibly the town was not unaware of this act when it appointed a committee of twelve, one from each ward, to propose a better government of the schools. The committee reported that there ought to be seven schools, that girls ought to be admitted to the higher schools, and that the town schools should be managed by a School Committee, the latter to consist of the nine selectmen and one person from each ward. The report was adopted and carried into effect. At that time Boston had 18,000 inhabitants. No provision was made for pri-

mary schools, although the State law tolerated them, provided they were kept at private cost, and superintended by the town authorities. Primary schools were known as dames' schools, being kept by women. There were some charity schools of this kind, and the principle of free primary schools was greatly promoted by the Sunday schools, successfully introduced in Boston in 1816.

In 1817 the town schools had 2,365 pupils, of whom but 836 were girls. Yet the town had nearly 40,000 inhabitants. Beside these public schools there were one hundred and sixty-two private schools, with 4,132 children in attendance, most of them girls. The number of truants was reported at 526. As the School Committee failed to act properly, the friends of primary town schools appealed to the town meeting, and Mr. James Savage hurled this indictment at the conservatives: "All children have an equal right to the [free] schools, we know, on the following conditions, and no other, viz., 1st, The child must be seven years old; 2d, He must be able to read in the Bible sufficiently well to keep his place in a class; 3d, He cannot be admitted after the age of fourteen, however well he can read, or however deficient he may be in writing or arithmetic." The town meeting, it is needless to say, decided in favor of establishing primary schools at the expense of the town; the School Committee, or grammar board, was ordered to appoint a committee of thirty-six, three from each ward, to carry the plan into effect; and $5,000 was allowed for expenses. The town of Boston and its schools were enriched by this memorable vote on June 11, 1818. Twenty-five primary schools attended by about a thousand pupils were immediately established; when Boston became a city, it had the Latin School, the English classical, the Eliot, the Adams, the Franklin, the Mayhew, the Hawes, the Smith, the Boylston, and thirty-five primary schools. In 1855, when the Primary School Committee held its last meeting, and its work passed into the hands of the School Committee, there were one hundred and ninety-seven primary schools, with some twelve thousand pupils. From 1818 to 1855, then, Boston had two school committees, one for the grammar and high schools, and another, appointed by the grammar board, for the primary schools. This committee consisted finally of one hundred and ninety-nine members. Its "Annals" have been saved from oblivion by Joseph M. Wightman, Mayor of Boston in 1860 and 1861. The men of 1818, especially James Savage and Elisha Ticknor, gave Boston not only its free primary schools, but an establishment which, in connection with the higher

grades, was destined to become a government in a government, to perpetuate government by committee, and to retain public respect, while the interest entrusted to them has become a popular passion of no mean significance.

Board of Health.

It may be possible to reduce police matters to municipal regulation, though not without danger to the State and nation. Epidemics, quarantine, and the public health are not altogether municipal. The questions of public health that troubled Boston in the seventeenth and eighteenth centuries were essentially non-municipal, the smallpox being a frequent and cruel visitor. Yet the selectmen were the town board of health from 1630 to 1799, the Province merely offering advice in the form of penal laws. The first quarantine act passed by the Province, in 1699, had been thrown out by the privy council, as an obstruction to commerce (1 Prov. Laws, 376). The State inherited from the Province the bad habit of leaving the management of epidemics and quarantine matters with the selectmen. In 1793 the General Court passed a law to prevent the spreading of smallpox, but left the administration to the selectmen (1 Gen. Laws, 420). In 1810 vaccination was provided for; but while every town was required to have vaccination officers, vaccination itself was left to the discretion of the towns (2 Gen. Laws, 253). In 1797 a general health and quarantine act was passed by the General Court, but left matters with the selectmen, unless towns saw fit to appoint a health committee (1 Gen. Laws, 539). A supplementary act, of 1800, did not change this (2 Gen. Laws, 9). Nor is it surprising that the health laws of the eighteenth century were confined to a struggle against contagious diseases. But by 1800 Boston had become a crowded and congested town. Nearly 25,000 people were living on the old peninsula of about one square mile. The water supply was not good, the sanitary arrangements were bad.

To appreciate the sanitary condition of Boston at about 1800, it should be borne in mind that the town ended just south of the present Kendall, Arnold, and Thorndike streets; that nearly 25,000 persons were living on less than a square mile of uneven territory, with imperfect drainage, and surrounded by flats; that the streets were ill-paved and ill-swept; and that the houses were low, thus calling for more ground to spread on. Add the commerce of Boston, involving the arrival of nearly 2,000 vessels a year from all parts of the world,

and the fact that but one corporation had tried to add to the natural, but insufficient, water supply. The selectmen and their police force were unable to cope with the nuisances that endangered the public health. On February 13, 1799, therefore, the General Court passed its first law for suppressing nuisances in the town of Boston, by a board of health to be chosen by the people. On June 20, 1799, this act was replaced by another, which has made a permanent impression (2 Special Laws, 307). It provided for the election of the twelve members constituting the Board of Health, by ward meetings, to be presided over by a ward clerk (sec. 1, 21). This eliminated the selectmen from the very beginning; they could not even call the ward meetings (sec. 21). In 1813 the board of health, together with the selectmen and the overseers of the poor, were entrusted with the duty of appointing the town treasurer and collectors (4 Spec. Laws, 502),—good evidence that the board had the public confidence. The board of health was the third of the new administrative departments established since 1776, and occasioned the new institution of ward clerks and ward elections. Its powers were very great.

The board of health appointed the scavengers, who were police inspectors with great powers for ordering other persons to keep the streets clean (8 Bost. Rec. Comm., 97; 14 Bost. Rec. Comm., 325; By-Laws of 1786, 123–126). The board was required to deal with all nuisances, and was given power to invade any premises for that purpose. Its Rules and Regulations, when published, had the force of town bylaws, the penalty attached being five dollars. The board had some power in the matter of tainted provisions, and undertook to do what the ancient market department ought to have attended to (see the regulations of the board, By-Laws of 1801, 36–39). Finally, the board had full quarantine powers, and was allowed a physician of approved ability. For the payment of all necessary expenses the board of health was "authorized to draw upon the town treasurer." The town committee of accounts, however, might inspect the accounts of the board. In 1803 the power of the board of health was enlarged; it could establish a quarantine on land, by preventing all unnecessary communication with infected places (3 Sp. Laws, 211). In 1816 a new act continued and enlarged the powers conferred in 1799 (5 Spec. Laws, 137). This act is an honor to the time. The board of health was to examine into "all causes of sickness, nuisances, and sources of filth that may be injurious to the health of the inhabitants of the town of Boston." The

board had power to seize any unwholesome meat, fish, bread, vegetable, or liquor; its rules were to cover all clothing and other articles that could convey or create any sickness, whether such clothing and other articles were brought into or conveyed from the town of Boston, the penalty in this case being up to a hundred dollars; the board had full authority over all burying grounds and funerals; it was allowed a town physician and a port physician (see its excellent regulations in the By-Laws of 1818, 72–96). The city charter transferred all these powers from the board of health to the city council. In 1799 the powers of the board of health were taken away from the selectmen, who were executive officers, to be transferred, in 1822, to a compound legislative body. The evil effect was felt for fifty years.

Overseers of the Poor.

Beside the police, the school committee, and the board of health, no new department was created by or for the town of Boston under the Commonwealth. Moreover, the board of health was unwisely abolished when Boston had become a city; the police department was created in theory only, or mainly, the expense being an obstacle in the way of maintaining an efficient police; but the school committee was to last, and to assume ever increasing importance, which is now (in 1893) greater than ever. On the other hand, the power of the venerable overseers of the poor began to crumble in the last days of the town. The overseers, whose mission was charitable, had kindly permitted themselves to look after the vicious poor, and in that way to become the instruments of reformatory, correctional, and penal work. Under the law of 1788 the overseers could discharge from the house of correction; under the law of 1798 the insane poor, properly under the charge of the overseers, were sent to the house of correction; the law of 1794 gave them special duties as to houses of ill fame; finally, the law of 1735, to which the Boston overseers appealed, when Josiah Quincy attacked them, had made them the managers of the workhouse for "the idle and poor" (1 Gen. Laws, 324, 557; 2 Prov. Laws, 757). As the town of Boston had no separate house of correction, workhouse, and almshouse, and as the overseers had charge of the almshouse, and the workhouse, and some authority in the house of correction, the poor, the idle, and the vagabonds all drifted under the care of the overseers, the latter consenting. Their colony, first in Beacon street, then in Leverett street, contained the respectable poor, with the vagabonds,

the sick, the orphans, the insane, and the outcasts. Even the jail was there.

This colony was kept together in 36 rooms; there it was fed by the overseers, who tried in vain to keep their company duly employed, the result being that the expenses of the town for the nominal relief of the poor were enormous. In 1776, for instance, the town was informed that its treasury had been drawn upon by the overseers for £3,458 11 2, while the selectmen had drawn £4,421 17 7½ (18 Bost. Rec. Comm., 257). It was not uncommon for the annual drafts of the overseers to exceed those of the selectmen (l. c., 87, 135). Mr. Quincy perceived that this was misplaced generosity, and induced the town to buy the estate at South Boston now occupied by the house of correction. The estate covered some sixty acres; there the house of industry was erected, the inmates to be employed on the farm. One of the last votes of the town approved the proceeding, and the overseers of the poor were requested to deliver to the house of industry such able-bodied poor as could be put to work. The overseers resisted. When Mr. Quincy became mayor, he fought this fight to the end, and the overseers were beaten. Under the town the overseers had charge of all indoor and outdoor relief, of the insane and the workhouse; Mr. Quincy left them nothing but outdoor relief, all else being transferred to what is now (since April 21, 1890) called the department of public institutions. The theory advanced by Mr. Quincy was correct, but it was not carried into effect. His opposition to the overseers of the poor simply resulted in making two administrative departments where one would suffice. It would have been wise to separate charity, correction, and punishment; this separation was not made; it has not been completed in 1893. Mr. Quincy's Municipal History states his view with spirit (pp. 34–40, 88–96, 138–147). The overseers defended their course in a spirited address "To their constituents," published in 1823; but they lost their control of indoor relief. The laws of February 3, 1823 (house of industry), of June 12, 1824 (house of correction), and of March 4, 1826 (house of reformation for juvenile offenders), made this loss complete.

Financial and Minor Changes.

Under the laws of 1786 (1 Gen. Laws, 217, 251) the town meeting chose annually nine assessors. As they were not able to cope with the work of determining the value of taxable property for a town of more

than 25,000 inhabitants, the General Court, in 1802, authorized each of the twelve wards to choose annually two assistant assessors, who elected the three principal assessors (3 Spec. Laws, 5). This arrangement answered the purpose, and incidentally strengthened the practice of ward elections, in the place of overcrowded town elections at Faneuil Hall. The assistant assessors and the board of health were chosen on the same day, the ward meetings for that purpose being held on the first Wednesday in April. The financial year, like the tax year, began on the first day of May. This date was found the most convenient. In 1822 a change was attempted, but proved inconvenient (Quincy, Mun. Hist., 46); a second change was made by the ordinance of March 21, 1891. But the tax year continues to begin on May 1, as in the days when Boston was a town. The act creating assistant assessors provided that the town treasurer, chosen in town meeting, should be the collector of taxes. In 1813 the selectmen, the overseers of the poor, and the board of health were authorized to choose the town treasurer and the collectors (4 Spec. Laws, 502). The same officers, thirty-three in all, had been authorized in 1812 to superintend the finances of the town, and were called the committee of finance (By-Laws of 1818, p. 4). The city charter transferred the election of the city treasurer to the mayor and aldermen, but the assessment and collection of taxes to the discretion of the city council—good evidence that the charter was not a thoroughly well-considered instrument. The town had ordered as early as 1786 that at every town vote involving money the vote should be counted, and that reconsideration should not be allowed, unless demanded by at least the same number of voters (By-Laws of 1786, p. 84). This prevented undue haste, and worked well.

Regular committees audited the accounts of the town treasurer, and submitted town budgets. Before the close of the eighteenth century the accounts of the town were annually published, at first in the form of broadsides. In 1811 a detailed account of expenses and town property was begun in pamphlet form. In 1812 this duty was assigned to the committee on finance, consisting of the nine selectmen, the twelve overseers of the poor, and the twelve members of the board of health, and when the office of city auditor was established, in 1824, he continued the series of reports begun by the finance committee of the town, his first report being the thirteenth in the series. Indeed, no suspicion attaches to the financial transactions of the town and its officers. The town was equally fortunate in the orders it issued. To prevent block-

ades in the principal street of the town, now Washington street, all teams were required more than a century ago to drive on the east side of the street when going north, and on the west side when going south, under a fine of ten shillings for every offense (By-Laws of 1786, p. 11). The Province system of fire companies was continued, but the selectmen were allowed in 1785 to appoint eighteen men for every engine, and in 1801 the number was increased to twenty-four men. The "Cataract," or number 14, was allowed forty men. The men attached to each engine chose their own captains, and made their own rules (By-Laws of 1818, pp. 150–154). In a case of fire the twenty-four firewards took control, if disorder can be called control. Nor was the later volunteer system an improvement equal to the occasion, though Mayor Quincy boasted in 1828 that he had twelve hundred firemen to fight the enemy of the town. The truth is, the town had not the money to pay for a good police, a good fire service, good water, good sewers, and good streets.

Plans for a City in 1784.

The change from town to city was taken with great reluctance. It was thought best to amend the State Constitution, in order to dispel all doubt about a city charter the General Court might grant. This amendment, proposed by the constitutional convention of 1820, was ratified by a very small majority of the voters, but it was ratified and still stands. It authorizes the General Court to give a city constitution to such towns as have at least twelve thousand inhabitants, provided such towns make formal application and give due consent (art. 2 of the Amendments). This amendment did not take effect until 1821, but prepared public opinion for the change impending in Boston. In the Colony and the Province the mere suggestion of such a change was rejected by the town meeting. Under the Commonwealth formal plans for the transition from the town organization, which is simple democracy, to a city, which is representative democracy, were submitted in 1784, in 1792, in 1804, and in 1815. They were all rejected, and fortunate it is they were rejected. The constitutions of the State and the United States supplied good precedents for a city charter; these precedents were not mentioned. Yet the government of a city cannot be wholly unlike that of a State or the nation. The essential part, as far as the constitution of either is concerned, is the extent and the proper distribution of the power to be vested in the government. The Con-

stitution of Massachusetts had laid down the ideal principle as to the distribution of power in a free government (Declaration of Rights, art. 30). When the charter of Boston was drawn up, the learned jurists looked to the town they would and would not abandon, and never to the State or the nation which had shown how to organise democracy, through representative institutions, in a free and efficient government. The lesson of the Articles of Confederation of 1777 had been forgotten.

The several plans for a city charter, submitted to the town meeting from 1784 to 1821, are still extant, but have very little save antiquarian or pathological interest. The committee of 1784, which included Samuel Adams, William Tudor, James Sullivan, and Thomas Dawes, submitted two plans, one of them an adaptation of the old New-York charter, as if the world had not advanced since King George II. The town meeting ordered the "Two Plans" printed and distributed, and at a later meeting rejected the schemes tumultuously (Quincy, Mun. Hist., 22–24; H. H. Sprague, City Government in Boston, 10–11). The first plan contemplated four annual elections by the people, two to be held in March, beside general meetings. The people were to meet for certain purposes in wards, for other purposes at Faneuil Hall. In a word, the simple arrangement of the town meeting was to be replaced by a complicated system. The government was to be vested in a corporation called "The Mayor, Aldermen, and Common Council of the City of Boston, in the Commonwealth of Massachusetts." The corporation was to be divided against itself, the mayor, recorder, and twenty-four councilmen to constitute the common council, but no common-council meeting to be legal, unless the aldermen were present. The mayor, recorder, twelve aldermen, and twenty-four councilmen were to make the ordinances; the mayor, recorder, and twenty-four councilmen were to raise the money for the use of the city; but only the mayor and aldermen were to appropriate and expend it. There was to be a town clerk, but the recorder was not to be that person; he was to tell the corporation of thirty-eight persons what each division could lawfully do. The second plan proposed that the corporation consist of the president and eighteen selectmen, one-third of the latter to be chosen by the people at large in a general meeting, and the remaining twelve selectmen by wards on the next day. No checks and balances were provided, and the corporation of nineteen was to tax and expend taxes at pleasure. This plan was rejected because the people understood it

too well; the other plan because nobody could understand it. The town was not prepared to transfer its whole government to an irresponsible committee of nineteen; neither would the town accept a common council of thirty-eight for one purpose, of twenty-six for another, while the power of appropriating and expending money, and of appointing city officers, was vested in the mayor and aldermen who were part of the common council, but voted only on certain topics. The wonder is, not that the plans were rejected, but that men of standing and reputation proposed them. The administration of justice and the onerous dependence on the county justices were not touched in the plans of 1784; the legislative and executive powers of the government were neither separated nor even defined; government by committee was to be made permanent; no appreciable relief or gain was offered to the voters and taxpayers. How could they help rejecting the plans? The rejection took place on June 17, 1784, and was complete.

Town versus City.

In 1785 a committee including Adams, Tudor, Sullivan, and Dawes, of the committee of 1784, reported that the constitution of the town was perfect, thus justifying the rejection of the previous plans (Sprague, l. c., 12). On March 23, 1786, the General Court passed its general town act, declaring "the inhabitants of every town within this government . . to be a body politic and corporate" (1 Gen. Laws, 250). The statement, therefore, that "the town of Boston was never formally incorporated" (Sprague, 6), is not entirely correct. The act of 1786 replaced the general town act of 1692 (1 Prov. Laws, 64), and this took the place of the memorable Colony act passed in 1635–36 (1 Mass. Rec., 172). These three acts are the ancient charters of the Massachusetts town, and as such have permanent interest. Without them it is difficult to understand the constitution of these towns, even at the present time. But it is significant that the rights and duties of a town or its selectmen have never been enumerated, and that towns generally may do anything not expressly prohibited by the General Court, or since 1789, by the law of the United States. The powers not delegated to the United States are certainly reserved to the States or the people. In Massachusetts the State has enumerated powers, and the State Constitution does not vainly enumerate and reserve the rights remaining with the people and not delegated. The declaration of rights is almost profuse in affirming the rights remaining with "the people," a term

used as freely as the term "town" is used in the frame of government. It is not unreasonable, then, to conclude that the people certainly have many reserved rights, and that they are free to exercise these rights in their corporate capacity as towns. The General Court can establish and abolish towns, but not wholly without their consent; it cannot prohibit town meetings (decl. of rights, art. 19), and it cannot annul a lawful contract (U. S. Const., art. 1, sec. 10). It cannot prevent the people from organising themselves for public purposes, from taxing themselves, from changing their government, and from treating all government as an agent of the people to whom it is responsible (decl. of rights, art. 5, 7). In their town meetings the men of Massachusetts could exercise the rights justly dear to them as freemen and as members of organised society. There they exerted their powers directly and visibly; there they could speak their minds; there they could join with their neighbors in ordaining what should be, or what should not be. It was in the town meeting and by the town meeting that the local aristocracy had become democratic, and that the American principle of equal rights and equal duties had been established. The people of Boston might exchange this government, with its many reserved and prescriptive rights, for something better; but the town meeting would not abdicate in favor of a committee, which it had been in the habit of creating and discharging at pleasure. The town might be disposed to delegate a part of its power temporarily to one set of agents, another part to another set of agents; it would not retire in favor of an annual committee. The town would accept greater power; it would not resign the power it had. The Boston men feared that the establishment of a city meant the loss of town rights; the neighbors of Boston feared that a city meant an increase in Boston rights, to the detriment of the neighbors.

In 1792 the town discussed the melioration of its government as proposed by a committee of twenty-one, including James Sullivan, William Tudor, Christopher Gore, John Quincy Adams, and Charles Bulfinch. They proposed a town council of twenty-seven, the nine selectmen to be chosen on a general ticket, and the remaining eighteen in the nine wards to be established. This town council was to make bylaws, and to choose a town attorney for prosecuting their violation. A special court was to be established for these causes. The town did not take kindly to this notion. The average voter does not naturally like a prosecuting attorney, and the idea of a town attorney to prosecute all

violations of town ordinances was not acceptable. The town would elect a number of officers; but the legislative and executive power was vested in the town council. That was more than the town meeting could bear, and, greatly to the surprise of John Quincy Adams and young Harrison Gray Otis, the whole scheme was rejected after full and fair consideration. Mr. Adams was disgusted with "simple democracy." Yet what could have induced the town to transfer the power of the town meeting to a committee of twenty-seven? To establish this committee, the people were required to have a general election and an election by wards, and the committee so elected was to unite legislative, executive, and prosecuting powers. The men who finally rejected the scheme have not been praised (Sprague, 12–14); but was it right, was it prudent, was it American, to vest nearly the whole power of the town in one unwieldy and irresponsible committee? Had not the Confederation illustrated the efficiency of committees that legislated and executed, nobody in particular being responsible for failures? The superiority of an annual committee over a temporary committee was not conceded. So the attempt of 1791–2 fell through, on January 26, 1792 (Quincy, Mun. Hist., 25).

The Plan of 1804.

In 1804 the town ordered a constitutional convention. The members were chosen in wards, that system having been introduced in 1799. The convention included James Sullivan, James Prince, John Davis, and Harrison Gray Otis, but none of the town officers that knew best where the shoe pinched. The convention met in Faneuil Hall, and was charged to propose whatever changes might be necessary in the town and county government. The work of the convention was prepared by a committee of the gentlemen named, with R. G. Amory and Charles Jarvis added. The convention finally proposed a town council of thirty-three or thirty-four, to consist of nine selectmen chosen at large, of twenty-four delegates chosen two by each ward, and of the Intendant, to be chosen by the thirty-three from among themselves or from the people at large. This title was borrowed from Charleston, S.C. The intendant was to preside at the town council, which made the bylaws, ordered taxes, appropriated money, and, strange to say, was to prosecute all suits in which the town might be a party. Lest this legislative body lack executive power, it was to manage all town property and to "give deeds in their name and behalf." The selectmen

were to expend the money not spent by the town council, the board of health, the overseers of the poor, or other town officers. The latter were to be appointed by the town council, except that the intendant was to appoint "the police officer" [sic]. The intendant was to preside at the meetings of the school committee, the selectmen, and the town council, and, worst of all, he was to appoint a regular time and place "to receive the complaints and representations of individuals." There he was to attend "daily." He was to have a salary, and would have earned it.

The convention—famous as the only constitutional convention ever held by the town—recommended "that suitable measures be taken to render the town of Boston a county," the town council to be the heir of the court of sessions, whose judicial work had been transferred to the municipal court. The reason why the selectmen were retained, is not clear, except that in managing his police officer the intendant was to have "the concurrence of the selectmen." But they were to be surveyors of highways. To produce the town council, at least two elections were required. As for the intendant, the town would be unable to see why he should not be elected by the people. If he was to be the head of the town, though only in name, the town would never permit him to be chosen by the town council, which was altogether overloaded with legislative and executive duties, and was to have more, should the court of sessions be abolished. Still the convention showed a certain improvement upon all previous attempts: it tried to regulate the town finances, it proposed to unite the town and county, and it undertook to give the town a visible head. The chairman of the selectmen was simply the parliamentary chairman of a board with undefined powers and rights. The town meeting was retained, but it was shorn of power. Then why retain it? the town meeting might ask. Plain men have a keen eye to the difference between shadow and substance. The people were less partial to the name of town, town meeting, or selectman, than to the power they knew so well how to exercise through these agencies. The people desired this exercise of power, and they were not prepared to transfer the whole power of the town to a standing committee they could not control. Nor are the plain men ever wholly wrong in their conclusions and judgments. The scheme of 1804 was laid before the town on March 12, and was not accepted. The people might distribute power, as they did in town meeting; they would not transfer all power to one body however representative.

The Rehash of 1815.

The plan of 1804, somewhat modified, was again proposed in 1815, when certain members of the town government had failed to be re-elected, and gentlemen felt that town government was a failure (Quincy, Mun. Hist., 26). Charles Bulfinch, who had been defeated, was chairman of the selectmen, received a salary, and was superintendent of police. Such men are apt to lose in popular elections. Nor does it appear why town government was a failure when certain good officers were thrown out. The town appointed a large and influential committee to report on the expediency of changing the municipal constitution. The committee included Jacob Rhodes, Redford Webster, and George Blake, who had served in the convention of 1804. Among the new members were John Phillips and Josiah Quincy, both destined to serve the city of Boston as mayors. The report of the committee is amusing, and the draft of the charter they submitted an echo of 1804. The convention had proposed a plain town council; the gentlemen 1815 proposed to call it "The Intendant and Municipality of the Town and City of Boston," adding that the term "town" was "absolutely indispensable" because it stood in the State Constitution; that Boston should be called a city because "this name has an effect to raise the rank of a place in the estimation of foreigners;" and that the head of the city-town should be called intendant because that term was used in Charleston, South Carolina. "implying the duties which he is to execute." The convention of 1804 had proposed that the intendant should be removable by three quarters of the town council so voting. The committee of 1815 omitted this bit of pleasantry. They gave him a voice at least in the management of town property, and treated the selectmen with some respect. All money not expended by the board of health or the overseers of the poor was to be expended by the selectmen, but only upon appropriations made by the municipality, which was to consist, apparently, of the intendant, the nine selectmen, and the twenty-four delegates combined.

The school committee and the county justices were treated with slender respect, and it was provided that "the town and city of Boston shall hereafter be a county." But the thirty-three or thirty-four members of the municipality were to appoint three justices of a police court, and "care shall be taken that all the justices of the county shall be taken in succession quarterly, if they shall express their consent to act as justices of said court." The same municipality was to appoint the

clerk of this police court. Possibly as a bid for votes the committee proposed that the municipality should "grant to any association of artists, artificers, or mechanics, such power of regulating themselves in their several occupations, and of possessing such immunities, and imposing such restrictions, as the said municipality shall consider for the benefit of the community and for the encouragement of industry." The chief executive of the town was to be chosen by a convention of the nine selectmen, the twenty-four delegates, the twelve overseers of the poor, and the twelve members of the board of health. The selectmen, overseers, and board of health, acting under the law of 1813, chose the town treasurer and collectors; this power the committee proposed to transfer to their municipality. But the most brilliant passage of their report is this: "The executive power efficiently exists at present in a superintendent of police, who is chosen by the selectmen out of their own body, and receiving a salary dependent upon their discretion, and responsible solely to them." The committee appears to have thought that the executive work of the town consisted in the duties discharged by the head policeman. Yet Josiah Quincy, who fancied himself a champion of the town meeting, would not trust the same town meeting to appoint a superintendent of police. The real executive work of the town-city was to be done by the thirty-three selectmen and delegates, the intendant to be the figure head, while the inevitable committees would use their best judgment in managing matters.

The constitutional reasoning offered by the report is astonishing. The report states correctly that the chief executive of the city-town should not be vested with judiciary powers [be the judge of the police court?], because in that case he would have to be appointed by the governor. Then the report proposes a police court of three justices selected by the city-town in quarter-yearly rotation, and "acting under the authority of the government of the town." The State Constitution said, and still says: "All judicial officers . . shall be nominated and appointed by the governor, by and with the advice and consent of the council," and Mr. Phillips, who signed the report, was president of the State senate. As the State Constitution contained the words "town" and "selectmen," the committee concluded bravely that "a board of selectmen is rendered necessary, by the letter of the Constitution, in every town in this Commonwealth." By a like train of thinking the terms "town" and "town clerk" were offered as "absolutely

indispensable," being "made so essential by the provisions of the State Constitution," which mentioned the terms just as it happens to mention "subjects," meaning citizens. The report tried to draw a line between executive and judiciary powers, though it treated justices of the peace and the police court as executive agencies. The obvious line between executive and legislative work was not drawn, partly, perhaps, because town affairs had always been conducted by committees, the members of which took part in town meeting; and it seemed natural that the men who had voted the money should expend it. The ideal that runs through all these committee reports is a town government containing none but able, honest and thrifty men, with a predominance of persons that have attended at least a highschool, and occupy some social position. The class of inhabitants that had neither wealth nor education nor influence to boast of, took a different view. They knew that they were not drones in the body politic or the body social, and that power belongs to him that fairly takes it. The report of 1815 was treated kindly by the town, which rejected it by a vote of 951 to 920. About one person in twenty saw fit to vote. The liberties of the town were saved.

From Town to City.

On June 5, 1821, the governor of Massachusetts announced that the General Court, under the second amendment of the Constitution, might incorporate cities. The people had approved the amendment with special reference to Boston, although it applied also to Salem which had the requisite 12,000 inhabitants. The amendment was carried by a very small majority, but it was carried, and prepared the public mind for the impending change. If the General Court could incorporate towns, it could incorporate cities; but the law lights of the Commonwealth thought the amendment desirable. In the same month—June, 1821—the Boston town meeting proposed to unite the office of town and county treasurer. The finance committee, which elected the town treasurer under the authority of ch. 62, Acts of 1813, failed to comply with the request of the town, for the county treasurer was elected by the people. This petty incident led the town to insist upon its preference, and to reconsider the relations of the town to the county. As usual when there is discontent, the cry of extravagance was raised. The fact is, the county expenses were moderate, but the county authorities were unpopular, mainly because most of them were Bostonians

appointed by the governor, and lived on fees and litigation. As the town was virtually the county, it seemed inconsistent with self-government that the acts of the town should be revised and occasionally set aside by a few townsmen whom the governor had commissioned. In due course the town received two reports, on the union of the town and county treasurer, and on making Boston a county. The two reports were turned over to a committee of thirteen, with instructions to report a plan for a better town and county government. Clearly the town was ready to act. It was ready to escape, if possible, from all county bondage.

The committee, as usual under the town, when important affairs were in hand, included great names: John Phillips, for years president of the Massachusetts senate, and destined to be the first mayor of Boston; Josiah Quincy, the speaker of the house, and deeply interested in Boston affairs, destined to be the great mayor; Lemuel Shaw, who had been selectman, and was to be chief justice; and Daniel Webster. The committee report was considered by the town on December 10, and recommitted. The report, commonly attributed to Lemuel Shaw, recommended the union of the town and county, and for the rest hoped that all powers of the town and county might be vested in a town council of nine selectmen and "about forty" assistants, except that the town clerk, the board of health, the overseers of the poor, the assessors, the firewards, the school committee, and some fifty petty officers should be chosen by the people, and,—which is important,—that the court of sessions be abolished, its executive duties to go to the town, while the judiciary work of the court and its members was to be vested in salaried law courts. The report appeared to separate the judiciary from the other branches, but, while leaving the town to choose annually some hundred and twenty town officers, not counting ward officers and State or national representatives, the executive and legislative work of the town and county was to be done by nine selectmen and forty assistants, without an executive head, that is, without responsibility. Boston, at that time, had about 45,000 inhabitants. The committee allowed one assistant to every nine hundred, and concluded that the total number of assistants would be "about forty." The town concluded that the committee had not gone far enough, added twelve men, and instructed this committee of twenty-five to draft a city charter.

The report so called for was submitted on December 31, and led to a memorable debate. The debate lasted three days, and ended in the

adoption of the terms mayor, aldermen, and common council, where the committee had proposed intendant, selectmen, and assistants; but far more important was the adoption of the principle that the executive power of the town and county was not to be in the hands of one body; it was to be divided; there was to be a system of checks and balances. The report had wisely proposed that the judiciary be separated from the other branches; the remaining power was to be distributed, lest any one branch wield too much power. This was achieved by the democracy of the town meeting. The plain men felt that the town gained when it inherited all the administrative work of the county; the plain men felt, also, that it was better to divide and distribute the administrative and legislative power of the town than to lodge it in any one body. The committee had proposed that the selectmen, now reduced to seven, should elect the "intendant;" the town voted that the mayor be chosen by the people. With like intelligence the plain men insisted upon elections by wards, and that the city government should not have the right to sell the common or "Funnel Hall." On the whole, the people showed greater progress and better insight than did the gentlemen who fought so tenderly for leaving things more or less as they were. It was the honor of the lawyers to have separated the judiciary from all other work. Nobody thought of separating executive and legislative work; everybody appeared to think that the mayor and aldermen were the executive body, while the city council was to be the town legislature that passed ordinances and made appropriations. The consequences of this confusion were to be felt for more than sixty years of administration by committee.

The result of the debate begun on December 31, 1821, was submitted to a popular vote on January 7, 1822. The people voted almost unanimously that Boston be a county, and, by a vote of 2,805 yeas to 2,006 nays, that the report for changing the town to a city, as adopted in town meeting, be approved and carried into effect. The act of the General Court was approved on February 23; on March 4 it was accepted by a popular vote of 2,797 yeas, to 1,881 nays, about one person in ten voting. On April 8 the first city election was held. Josiah Quincy describes the change from personal knowledge. Mr. H. H. Sprague (pp. 18–31) gives additional details. It is difficult to exaggerate the services the town officers had rendered, especially the selectmen who were not consulted when a city charter was under consideration. Under the Colony the selectmen had been administrative, legislative,

and semi-judicial officers in one; under the Province all their judiciary and many of their administrative duties had been lost to the county justices; the management of many important affairs had been transferred, both under the Province and especially under the Commonwealth, to other town officers; yet they had served faithfully and without compensation, except that their chairman received a salary when he became superintendent of police. The selectmen, the overseers, and the board of health had free access to the town treasury; their acts were never suspected. They had the power to incur debts; they left the town without a debt; the city inherited from the county a debt of $71,185.

The volume of By-Laws published by the selectmen of 1818, possibly the compilation of Thomas Clark, the town clerk, illustrates the fidelity and insight of the selectmen, and presents a matchless picture of the town government. No later attempt has equal value. The city has published many ambitious volumes; but only the code of 1818 undertakes to cover the whole field of local government. And that attempt is almost silent as to schools. It enumerates the 112 officers chosen annually in town meeting; also the officers appointed by the selectmen. It shows how each ward elected a member of the board of health, two assessors of taxes, and a ward clerk, and how the board of health together with the overseers and selectmen elected the town treasurer and collectors of taxes. In the place of this army the citizens of Boston, qualified as the amended State Constitution prescribed, were to choose one mayor and eight aldermen at large; in each ward four councilmen, one member of the school committee, one overseer of the poor, not less than three firewards, and the ward officers. All other officers were to be appointed by the city government. The town and county finances, managed by two treasurers and at least four conflicting boards, were united and transferred to the city government. The ordinances of the city were not subject to the veto power exercised by justices of the peace. The city was to have a representative head, and the powers formerly exercised by the town meeting were distributed among two bodies, each having the negative upon the other. The town, then, made a great gain in power; this power was not vested in any one body, but distributed; the constitution was simplified; a system of accountability was made possible; and the individual citizen was relieved. Under the town he had to elect more officers than he could possibly know, and to attend more meetings than was reasonable. Under the city he was

to attend to all local affairs in one election. The town had gained; the citizen had gained; the government had gained; and the liberties of Boston were increased beyond those of any other community in Massachusetts. This very striking advantage was secured by the plain men of Boston who did not reason closely upon constitutional principles, but knew very well whether popular rights were to be increased or diminished. Much is due to the learned and highminded men that drafted the charter; more is due to the town meeting that stood for popular rights. All honor to the reforms that come from the intellectual and scholarly few; the noblest reforms come from the plain people.

THE CITY PERIOD, 1822 TO 1890.

The chief source for a constitutional history of the city is to be found in the Acts of the General Court. A complete set of these laws is not common; nor is there a general index. Up to 1831 the General Court usually met twice a year. The general laws have been digested in three several codes, the Revised Statutes, passed November 4, 1835; the General Statutes, passed December 28, 1859; and the Public Statutes, passed November 19, 1881. The special statutes passed by the Commonwealth have been printed in a separate set, under the authority of the State; but the set is not absolutely complete. The city of Boston has repeatedly tried to make a code of all laws and ordinances applicable to the municipality. Such codes were issued in 1827, 1834, 1850, 1864, 1869, and 1876. The compilations of 1827 and of 1850 are interesting as illustrating the government of the city under the first charter; the compilation of 1864, with its several supplements, is relatively complete; and the compilation of 1876, being the work of James M. Bugbee, is valuable. A purely historical treatment of the laws, ordinances, regulations, and orders of the city government is a desideratum. The city published in 1860 the Annals of the Boston Primary School Committee, by Joseph M. Wightman, covering the government of the lower schools from 1818 to 1855. A "Manual for the use of the Overseers of the Poor" appeared in 1866. Private enterprise has undertaken a history of the Boston fire department. And some of the executive departments have begun to publish the law by which they are governed. The city ordinances have been issued, in separate digests, in 1883, 1885, 1890, and 1892, with the Regulations of the Board of Aldermen added. In 1885 the law department of the city issued a volume of special statutes relating to Boston; an enlarged edition, with

"extracts from the Public Statutes," appeared in 1887; a third edition, entitled "Special Statutes relating to the City of Boston," and omitting the general laws, appeared in 1892, but is not complete. Much information is scattered through the "City Documents," the titles of which are digested in an index. The documents mentioned under the entry of "charter" are important. Charter digests appear in the city codes, up to 1876, also in document 28 of the year 1875, in a pamphlet published by the city in 1886, and in the Municipal Register, published annually since 1841. All these digests should be used with reserve. Quincy's Municipal History is a brilliant account of the author's administration, from 1823 to 1828. Mr. James M. Bugbee, in 1887, and Mr. H. H. Sprague, in 1890, published brief reviews of the Boston government from the beginning. In 1891 the Record Commissioners published a Catalogue of the past City governments.

Area and Population.

The area of Boston was smallest from 1739, when Chelsea was set off, to 1804, when South Boston was annexed. The area of the city was enlarged by encroachments upon the surrounding water, especially in the South and Back Bays, by the annexation of Roxbury in 1868, of Dorchester in 1870, of West Roxbury in 1874, all these being transferred from Norfolk County, and by the annexation of Charlestown and Brighton in 1874, these two being transferred from Middlesex County. Including the harbor islands, the area of the city is nearly forty square miles; the original peninsula, north of Dover street, was less than five hundred acres. The population of Boston, in 1820, was 43,298; in 1890 it had risen to 448,477, the original peninsula, enlarged by encroachments upon tide water, containing 161,330, while 287,147 lived on annexed territory, including East Boston, the harbor islands, and South Boston. Suffolk County, which had 43,940 inhabitants in 1820, rose to 484,780 in 1890. Its area was smallest from 1803 to 1804. The annexations of 1874 made it the most populous county in Massachusetts. The city and the county are one; the city holds all property of Suffolk County; the voice of Chelsea, Revere, and Winthrop in Suffolk-County matters is insignificant; the dreams of 1650 and 1677 have been realised; Boston is the only municipality in Massachusetts not subject to a separate body of county commissioners; it is not surpassed for municipal spirit; and yet the great city has not become a homogeneous community. East Boston and West Roxbury have a city gov-

ernment in common, but little else that they have not in common with other cities or towns. The law of 1885 made the city a monarchy; but even a great monarch in this democratic land cannot master the reasonable ambition of so composite a community. Local ambition has achieved magnitude. Has it achieved municipal greatness? Has it magnified self-government? In 1845 it was thought that foreign immigration destroyed or impaired the unity of Boston. In the fifties this sentiment swept through the State; and yet the foreign immigrant should not be blamed when Brighton and East Boston are commonly spoken of as separate communities. Boston made its greatest gains in self-government before it covered thirty-seven square miles. After the great annexation it has been governed mainly by State law, and since 1885 the General Court is the chief legislature of Boston; the mayor the executive officer chiefly of State-House law. The ordinances of the city, since 1885, have been comparatively insignificant. Boston has become large; but it consists of the city proper, with a half-dozen thrifty suburbs mechanically attached to the metropolis. These suburbs have gained by annexation, the old peninsula has not. Once it had to satisfy only its own local wants; now it has to provide for a family enlarged by hopeful agreement. Yet the old peninsula, up to the Roxbury line, contains two-thirds of all the property taxed by the city.

Of the Boston population roughly one-third is foreign born; another third is of foreign parentage. In 1845 it was noticed that only 27 per cent. of the population was born in Boston of American parents, and that "foreigners and their children" constituted nearly one-third of our population. Persons interested in such subjects will find Lemuel Shattuck's Census of Boston for 1845 interesting, and may consult Carroll D. Wright's digest of the Boston census for 1880. The national census of 1890 promises the latest details. The admirable State Census of 1885 gives luminous details as to the parent nativity of our population. These writers all show how largely our population has been recruited from Ireland and British North America, and, to the thinking mind, how rapidly this immigrant element is either amalgamated or lost. A great city seems to be the cemetery of the country, and America seems to be the cemetery of foreign nations. What survives helps to make up the American nation, without visibly affecting our inherited laws, institutions or language. These appear to be stronger than all influences from without. And even the humble immigrant

comes here very much as did the fathers we honor,—to improve his condition, not to upset the law and order to which he looks for encouragement. This immigration is governed by natural causes. It was slight while Boston was a commercial city; it became noticeable when we had occasion to build canals, turnpikes, and especially factories. In 1822, when Boston became a city, the art of Macadam was not generally known; illuminating gas did not light the streets of Boston; steamboats had been seen, but were not trusted; our first railway track was laid in 1826, at Quincy; our passenger railways belong to 1834 and later years; the first ocean steamer, the "Britannia," arrived in 1840; our first line of street railways was opened in 1856; we had our last riot in 1863; the elevator in our city hall was built in 1874; the first message by the electric telegraph was sent by Morse in 1844; in 1846 the telegraph connected Boston with Springfield; the telephone came in 1877; the city introduced electric lights in 1882; electricity as a motor in our streets was accepted by the city in 1889. The number of tippling-shops in Boston is not any larger in 1892 than it was in 1822. On the whole, then, immigration has not checked progress, and perhaps it has supplied some of the hard work that had to be done to build our sewers, streets, canals, railways, and waterworks, and to carry out the plans of more enterprising minds. These minds have more enterprises than there are hands to carry them out, and the whole world has more work to do than there are men ready to do it. Boston would be a small city but for fresh blood from the country, and New England would have lost its people in good part to the great West, had not foreign immigration supplied the places left vacant by our own emigrant who sought to improve his condition beyond the Alleghanies. But the character of New England and Massachusetts and Boston has not suffered. The census of 1885 tells us that of the Boston population ten years of age and older, seven per cent. was illiterate. That fact is due to immigrants. But they have neither made nor marred the laws that govern the city.

The City and the County.

In accepting the city charter the people of Boston accepted also the Act of 23 February, 1822, for regulating the administration of justice in Suffolk County. This interesting act, known as ch. 109 of 1821, formed part of the charter, with which it was to stand or fall. Without this act the charter is incomplete. Its effect is still felt. It drew a

sharp line between the administration of justice and all other work of the city and county. It relieved the law courts of all administrative work, which was assigned to the board of mayor and aldermen, and it abolished the veto power the ancient court of sessions had exercised since 1699 over all bylaws passed by the town. The administration of justice was kept by the State; the executive power of the county was transferred to the city, and by the Act of February 10, 1823, the city council was empowered to lay and assess county taxes (1821, ch. 109, s. 13; ch. 110, s. 15; 1822, ch. 85). The town of Chelsea, beside Boston the only town in Suffolk County from 1803 to 1846, was relieved of all county taxes, and of all ownership in the property of Suffolk County in 1831 (1831, ch. 65, accepted by Chelsea Sept. 5, 1831). But Boston supplies all Suffolk county, now consisting of the cities of Boston (since 1822) and Chelsea (since 1857), and the towns of Revere (set off in 1846 as North Chelsea, named Revere in 1871) and Winthrop (since 1852, when it was set off from North Chelsea), with county buildings, and pays all expenses of Suffolk County, except that Chelsea, Revere and Winthrop pay for such services as they may accept from the county commissioners of Middlesex acting in the three communities named (Publ. Stat., 205).

By a fiction Boston became virtually a county. Under another fiction Chelsea, Revere, and Winthrop remain in Suffolk county, and vote for certain officers of Suffolk county, such as the district attorney, three clerks of the Supreme and Superior courts for Suffolk county, the register of probate, the register of deeds, the commissioners of insolvency, and the sheriff, though all these officers are paid by the city of Boston. At the same time the people of Chelsea, Revere and Winthrop vote for the county and special commissoners of Middlesex, who have one kind of jurisdiction in Chelsea (1872, ch. 87), and another in Revere and Winthrop (1893, ch. 417, s. 255). The East-Boston District Court has jurisdiction of Winthrop (1886, ch. 15), and the Police Court at Chelsea has jurisdiction in Revere, but both courts are a charge upon the city of Boston, while the justices and clerks of these courts are appointed by the State. The Boston city charters of 1822 and 1854 contemplated that Boston should become a county in fact (1821, ch. 110, 15; 1854, ch. 448, s. 38); and the law of 1831 debarred Boston from opposition, should Chelsea, since then divided into one city and two towns, request to be set off to "any other county." But why should Chelsea, Revere and Winthrop ask for such a transfer, when Boston

pays their county expenses, and they vote for county officers in both Suffolk and Middlesex? The Superior Court for Suffolk County, the Municipal Court of the City of Boston, the East-Boston District Court, the municipal court for the Charlestown district, and the municipal court of the South-Boston district, moreover, have concurrent criminal jurisdiction over a part of Hingham and over Hull (set off from Suffolk to Plymouth county in 1803), and over the islands in the lower harbor, as well as over a large water area (Publ. St., 202, 409, 856). By implication this jurisdiction is held to extend, in a measure, to the Boston police force, which is an executive body (Rules and Reg. of Police Department, 1889, p. 12).

The jurisdiction of Boston includes the harbor as far as Lovell's island; a certain joint jurisdiction goes farther, and includes a part of Plymouth county. Chelsea, Revere and Winthrop, on the other hand, are nominally in Suffolk county, but virtually in Middlesex county as well. The jurisdiction of the lower law courts is concurrent along the boundary lines of their respective districts (Publ. St., ch. 154, s. 50); and where the counties of Suffolk and Middlesex are separated by the Charles river, the counties have concurrent jurisdiction over the river (1794, ch. 31; Publ. St., ch. 22, s. 11). The rights and duties of Suffolk county, then, are extremely complicated, and not always clearly defined. But Boston alone among all the municipalities in the Commonwealth exercises all the powers a county and city can exercise in Massachusetts; and this advantage was obtained by the two acts of 1822, which made Boston a city. No other city in the State has like advantages. Boston had fought for this unique position in Colony and Province times, and from the very beginning it had shown generous hospitality to the government offices of Massachusetts. This hospitality continues; for the court house of Suffolk county is maintained by the city of Boston and is the home of the Supreme Court for the Commonwealth. Accordingly the proud capital still repays the privilege conferred upon it in 1822. It has always been the capital, and it has never failed to discharge the duties of a capital. Some of these duties it has discharged with munificence, and since 1822 it has not asked for favors.

Administration of Justice.

The reason why the administration of justice, during the later years of the town, was so unsatisfactory, is twofold. In the first place, the

justices of the peace could not command public confidence; their courts were almost private, and they lived on fees. Far more serious and annoying was the fact that the court of sessions, which consisted of justices of the peace, had large administrative powers, especially in county matters. This was remedied by the act of 1822 (1821, ch. 109). The police court then established consisted of three competent judges, who inherited the criminal jurisdiction of the sessions and the justices of the peace, and also, as a justices' court, the entire civil jurisdiction of the justices of the peace. The town court, which had existed since 1814, was merged in the Court of Common Pleas for the Commonwealth, in 1821. The municipal court, established in 1800, remained—since 1843 as a branch of the Common Pleas—until 1859, when it was merged in the Superior Court, as was the Superior Court of the County of Suffolk, that had been established in 1855 (ch. 449). The Superior Court, then, established in 1859, was the heir of the Superior Court of Suffolk County, of the Municipal Court, of the Court of Common Pleas, and, indirectly, of the town court. Under the amended Constitution (am. 19) the clerks of the Supreme and Superior courts for Suffolk county have been elected by the people since 1855. The police court of 1822, and its civil branch, the justices' court, were merged, in 1866, in the Municipal Court of the City of Boston (1866, ch. 279). At first its judges were paid by the Commonwealth; but its clerks were elected by the voters of Boston. The clerks are now appointed by the State, and the judges are paid by the city. The court has given great satisfaction, but was established before the great annexations took place.

Boston had a prosecuting attorney as early as 1800; and he was elected by the people (1799, ch. 81, sec. 4). In 1807 his appointment was vested in the State, and for obvious reasons the offices of town and county attorney were united when Boston, in 1822, assumed all expenses of Suffolk County (1821, ch. 104). In 1855, in an age that had limited wisdom and unlimited courage, the attorney-general and all district attorneys were made elective officers, the district attorney being chosen triennially by the voters in Suffolk county (Mass. Const., am. 17, 19; St. 1893, ch. 417, sec. 250). But a prosecuting officer is clearly a branch of the executive, not of the judiciary. For this reason he should be appointed by, and responsible to, the executive head. For purely executive purposes, and as counsel, the city established a law department in 1827, the head of the department being called city solicitor, who had an assistant, from 1839 to 1844, called city attorney. In 1881 the office

of corporation counsel was established, the city solicitor being his associate. Unfortunately the opinions of this law department are not published, except incidentally. But the city has been well advised in the law, and the law courts in Boston, down to the lowest, are above reproach. The judges have been learned in the law, very faithful, and in the full possession of public confidence. The city of Boston votes higher salaries than does the General Court. The country appears to oppose salaries above a certain conventional point, and may boast that it has not failed in securing both talent and integrity, particularly in the administration of justice. The judiciary is the only branch of government in the United States that has escaped general distrust.

In consequence of annexations to the city, its municipal court, as established in 1866, would have proved insufficient, had it been required to serve the enlarged community. Like its predecessor it had but three judges; now it has five. The police court at Chelsea had been established in 1855 (1855, ch. 26); in 1874 the municipal court of the East-Boston district, with jurisdiction over Winthrop, was established, and became the East-Boston district court in 1886 (1874, ch. 271; 1876, ch. 240; 1886, ch. 15); the municipal court of the South-Boston district was established in 1874 (1874, ch. 271; 1876, ch. 240). This relieved the municipal court of the city of Boston, the jurisdiction of which is limited, since 1876, to the peninsula proper, or wards 6–12 and 16–18. When Roxbury was annexed, in 1868, its police court was retained, and is now known as the municipal court of the Roxbury district (1867, ch. 359; 1876, ch. 240). In 1870, soon after annexation, the municipal court at Dorchester was established (1870, ch. 333). When Charlestown was annexed, in 1874, its police court became the municipal court of the Charlestown district (1873, ch. 286, sec. 4), and in the same year the municipal courts in the West-Roxbury and the Brighton district were established (1874, ch. 271; 1876. ch. 240). So there are nine municipal courts in Suffolk County, and eight in Boston. They have jurisdiction of civil causes involving not above a thousand dollars, and of crimes under the degree of felony, where a prosecution by information or indictment is not required (Publ. St., ch. 154; St. 1893, ch. 396). Owing to the uniformity of the law, and to the authority of the higher courts, but especially in consequence of the character of the justices who have summary power, the municipal courts have worked well. The Probate Court, inherited from the earliest time of the Province, now also a court of insolvency, is a county court in the best sense. It

still acts under the interesting law of 1818 (ch. 190); but since 1858 the register of probate is elected quinquennially by the people (1893, ch. 417, s. 252).

The Charter.

The first city government of Boston was organized on May 1, 1822. The mayor, the eight aldermen, and the common council were impressed with the idea, that town government was a great blessing, and that a city was intended to be as nearly like a town as possible. "As far as practicable," Mr. Quincy tells us, "the customs and forms to which the citizens had been familiarized under the government of the town, were adopted" (Quincy, Mun. Hist., 44). The same prejudice, for such it was, runs through the charter of 1822. The administration of police, the executive powers of the city, and all the powers previously vested in the selectmen, whether by law, by town vote, or by prescription, were given to the board of mayor and aldermen (1821, ch. 110, sec. 13), and all other powers previously exercised by the town were vested in the two branches of the city council, to be exercised by concurrent vote, each branch having a negative upon the other (l. c., sec. 15). The mayor was to nominate all officers whose appointment depended on the aldermen (sec. 21), and he could summon the city council or either branch to hear his recommendations (sec. 12); but he was to be no more and no less than the chairman of the city board of selectmen, with strict orders to be a vigilant and useful inspector. The real power of administration was lodged with the aldermen. The same principle still adorns the statute book of Massachusetts. City councils have the power of towns, "the mayor and aldermen shall have the powers and be subject to the liabilities of selectmen" (Publ. Stat., ch. 28, sec. 2). The intention of the charter was that the city should be governed like a town, or that a representative democracy should follow the precedents of a self-governing democracy. But the difference between a simple democracy and representative democracy is radical.

The powers vested in a town are not defined, save in particular instances. Neither are the powers of selectmen. It appears that selectmen are chosen for a definite period of time; but their powers are indefinite (see 1893, ch. 423, sec. 6–9), and subject to orders issued by the town meeting, which is the town government. A selectman is an agent; a board of selectmen is not a government. The mayor of a city

and the members of a city council are not the agents, but the members of a government. Selectmen are the agents of a government; the mayor and city council are themselves a government. Public opinion shrinks from this conclusion, and likes to urge that cities are mere corporations, but not a government. In truth, the mayor and city council of Boston are a real government, not wholly unlike that of either the State or the United States. All three have limited powers; but within the limits prescribed by law each government has very great powers. A selectman is constantly subject to new orders from the town meeting; a city government is not, although the Boston charter of 1822 retained the semblance of general meetings giving instructions to the city government (1821, ch. 110, sec. 26). The orders of a town meeting are binding upon the selectmen; the "instructions" of a Faneuil-Hall meeting are not binding upon the city government. It was an illusion to retain these meetings. It is an illusion to say that aldermen have the power of selectmen. It is an illusion to think that a town government and a city government can be similar. Being a representative government, with distributed power, the government of the city of Boston resembles that of the United States rather than that of a Massachusetts town. A town government is the very ideal of self-governing democracy acting for itself, issuing orders, and supervising its agents; a representative government is not a real democracy, but a sort of democratic aristocracy, on the theory that the democracy will choose the best men to conduct the government business. A town meeting is democracy with government power exercised by the many; representative democracy is the power of the many transferred to the few. The charter of 1822 made this transfer, but failed in the proper distribution of the power transferred. It separated the judiciary from the executive and legislative branches; and this separation entitles the charter to permanent respect. The charter erred in not separating the legislative and executive officers of the city government, and in not establishing a system of checks and balances, which is the very essence of representative government. Without a sharp separation of powers, and without a full system of checks and balances, a representative government might be a tyranny. Democracy, as the town meeting well knows, holds all municipal power. When the town surrenders the direct exercise of this power, when simple democracy becomes representative democracy, full municipal power is not given to one person, nor to one body, but is carefully divided, lest the government be despotic. Under

a wise separation and distribution of power, the legislative authority of the municipality is vested in a body composed of two branches, each having the negative upon the other, lest there be hasty ordinances, hasty loans, hasty appropriations, hasty action. The executive power is vested elsewhere, lest the laws of the city fail of impartial, fearless, and prompt execution.

The charter of 1822 did not make this necessary separation; it vested in the aldermen full legislative and executive power, while establishing a figure head called the mayor, whom the public might blame when the aldermen did not govern well. As great executive power was vested in the eight aldermen, the forty-eight members of the common council were pardonably jealous, and tried to secure a part of the administrative power. When the aldermen consented to a government by committees, the common council came very near exercising executive power through the joint committees of the two legislative branches. The charter itself gave the city council power to elect all officers not otherwise provided for, and this power was used freely (l. c., sec. 16). Nor is it wrong that a government branch or board or officer should exercise all power within lawful reach. The result was that as late as 1881 Mayor Prince declared the functions of the mayor, in the inauguration of civic measures, to be "merely advisory" (Inaug. Addr., p. 8). He might have added that his executive powers were chiefly advisory, and that city councils were reasonably unwilling to take advice. Why should they seek advice? It is as safe to trust one's own judgment as to follow other men's advice. The fault was not with the city council, to whom it is usually charged, but with the charter of 1822. That instrument lodged all municipal power in the city council, and instead of creating an executive officer, the equal and rival of the city council, made the mayor the chairman of the aldermen, without any veto power beyond his vote. At the same time he was made a member of the school committee, and not even its chairman, except by courtesy. The "care, custody, and management of all the property of the city" was expressly vested in the city council (1821, ch. 110, sec. 16) In a word, the charter of 1822 transferred the power of the municipality to the city council, except the judiciary, and a few matters, like the firewards, the overseers of the poor, and the care of the public schools. The only remedy left with the people was a refusal to re-elect members of the government that had proved unsatisfactory. Beyond this the city council had almost unlimited municipal power, and one marvels

that this power of creating taxes and debts was not used more extravagantly than the records disclose. One marvels at the ability and fidelity of the several city councils. One wonders that the city ever escaped a great scandal in its municipal affairs. It was not the virtue of the charter that saved the city government from disgrace. On the whole, the city councils and their committees were better than the charter, and did better than the charter required. For the charter almost invited misgovernment. It established irresponsibility, and yet the city was not totally misgoverned.

The Public Schools.

Easily the most interesting of all our municipal institutions are the public schools, not only for the lavish support they have from the tax levy, but also for the position they occupy in our system of government. The schools are entirely supported from taxes, and now consume, speaking roughly, about one-fifth of the annual tax. No expense for schools seems too high in the estimation of the people, and an attempt to reduce teachers' salaries, or to delay the erection of new schoolhouses, or to reduce the work of the schools, excites popular indignation. At the same time the schools retain the traditional government by committee. And the more popular they became, the more they drifted away from the general city government. The city council votes a gross sum for schools; the school committee expends the money, and has entire charge of the schools, including, since 1889, the erection and repair of all school buildings. The mayor of the city, however, has a limited veto power over all school-committee votes involving the expenditure of money (1885, 266, sec. 10), and his approval of contracts involving $2,000 or more, is required (1890, 418, sec. 6). But the civil-service law of the State does not apply. The laborers and clerks employed by the city must first pass an examination conducted by the State, while the teachers in our schools are entirely under the control of the school committee.

The charter of 1822 vested the care and superintendence of the public schools in a board of twenty-one persons consisting of the mayor, the eight aldermen, and one person in each of the twelve wards chosen at the annual city election. As the aldermen were overwhelmed with all sorts of duties, many of them purely administrative, they were relieved of their school work in 1835. The law of that year (ch. 128),

adopted by the people on April 29, 1835, vested the management of the schools in a school committee of twenty-six persons, including the mayor, the president of the common council, and two persons from each of the twelve wards chosen annually by the people. The common council was jealous of the executive power exercised by the aldermen, and the new arrangement, such as it was, appears to have been a concession. But this school committee dealt with the grammar schools, the primary schools being left to the care of the self-perpetuating primary school committee established in 1818, and continued until 1854. The city built its first primary school house in 1835. Even so great a man as the elder Mayor Quincy rejoiced when the establishment of a girls' highschool was prevented (Mun. Hist., 216–225, 269–271). He seemed happy that the girls' highschool had not been revived in 1851. Yet when the first examination for admission to the girls' highschool was held in 1826, the number of applicants was two hundred and eighty-six. In other words, the school system was imperfect, and the school government irregular in fact as well as in law (Mayor Bigelow's inaug. address, 1850, p. 5; city docs. of 1852, no. 22).

This irregularity was removed by the city charter of 1854, which incidentally abolished the primary school committee, and placed the care and management of the public schools under a committee of seventy-four persons, consisting of the mayor, the president of the common council, and six persons from each of the twelve wards, chosen by the people. These specially-elected members of the school committee were chosen for three years, being the first departure from the ancient habit of returning public officers once a year to the people. Not only were these members of the school committee chosen by wards, but they must be inhabitants of the wards that chose them. The question whether aldermen and members of the school committee should be chosen by wards, or by the city at large, has been much discussed. The critics usually prefer the arrangement that has not been made. As long as the city was relatively compact, that is, before the annexations from 1868 to 1874, a certain community of interests existed which justified general popular votes for general officers. Yet this principle was in part abandoned as early as 1799, to the satisfaction of the people. The school committee established in 1854 certainly gave satisfaction, and unified the school department. The primary school committee, with its 199 members,—one to each primary school,—was discontinued, and an attempt was made to give the schools an executive

head, by the title of superintendent. The first superintendent of schools was appointed in 1851; but he is still the mere clerk of the school committee. The principle of dividing legislative and administrative functions as to the public schools was not considered in 1854, and has not been established since.

This fact, that the schools needed an executive head, and the annexations of the suburbs to 1874, occasioned the law of May 19, 1875 (ch. 241), which still controls. This law continued the mayor as chairman of the school committee, as if to maintain some connection between the public schools and city hall; occasionally the mayor would serve as chairman of some sub-committee appointed from the general school committee. The latter consisted, beside the mayor, of twenty-four members, eight being chosen annually to serve three years. They are chosen by the voters of the city at large, and in 1879 the right to vote for members of the school committee was given to women substantially on the same conditions as the male voters must comply with. The law of 1885, ch. 266, wisely excluded the mayor from the school committee, which thus consists of twenty-four persons elected by the people at large, under a generous suffrage, the constitutional amendment of 1891 having swept away the payment of a tax as a prerequisite of voting. All American citizens at least twenty-one years of age, not paupers, able to read the Constitution of Massachusetts in English and to write their names, who have lived a year in Massachusetts, and six months in Boston, who are duly registered as voters, may now vote for the Boston school committee (1893, ch. 417, sec. 13, 14). While the possible number of voters for school committee is now (in 1893) about 200,000, the actual number has never approached 100,000. At the city election of 1888, when the largest number of citizens voted, the total was only 63,548 men and 19,490 women. At the city election of 1892 the number of municipal voters was 68,447 men and 9,510 women.

The expense for schools, disbursed by the school committee, is about two million dollars a year. Nominally the expense was as high in the first year after the great annexations. Theoretically the school committee is the product of a suffrage that cannot be more liberal, unless aliens and minors be included. The school committee of twenty-four persons can discharge teachers and other servants at pleasure. It may engage them on its own conditions, except that janitors and persons having charge of boilers are supplied by the civil-service commissioners

of the Commonwealth. For executive officers the school committee has a board of one superintendent and six supervisors, who may examine and report, but cannot really order or act, their power over principals being specially limited. Yet the vast establishment has never been tainted by party politics; owing in part to the high salaries offered, the school committee, itself unpaid, has secured instructors and other officers of the best character; and the schools have the enthusiastic support of the people. From time to time the general city government has been assailed by public opinion; the school committee has not. The organisation of the city government has been condemned; the organisation of the schools and their government is scarcely a subject of discussion, much less of criticism. The system may be theoretically wrong; it has worked to the general satisfaction of the people who pay the bills. The establishment shows that even a defective law may be well administered, and the school committee itself is the best illustration of American adaptability and of unselfish citizenship devoted to the public service.

Fire Department.

The charter of 1822, in establishing the city of Boston as a municipal corporation, vested its government in the mayor and city council, the school committee, the overseers of the poor, and the firewards, respectively. The firewards had existed for more than a century, and under the law of 1711 were appointed by the selectmen and the justices. Ever since 1745 they were elected by the people, and the city charter of 1822 (sec. 19) required that three or more firewards be chosen in each of the twelve wards. A fireward was in command at fires, and could require any person to obey. The term is still used (Publ. Stat., 267), a fire engineer having the authority of a fireward. At the same time, the firewards had a certain authority over buildings and explosives. The appearance of dozens of commanders at a fire may be imagined. A petty conflict of opinion between the fire companies and the elder Quincy led to the appointment of a chief engineer, in 1826, and to the repeal of the law requiring the election of firewards (see the law of June 18, 1825, adopted by the people on July 25, 1825). Mayor Quincy's Municipal History tells the story in detail; but the real point is the establishment of an executive officer to take command at fires. That office still exists. When Mayor Quincy retired, he reported the department to consist of "twelve hundred men and officers" (Mun. Hist., 264); the re-

port of the department for 1892 says: "The entire force of the department consists of about 800 men."

The chief engineer and his assistants were elected by the mayor and city council; the fire companies were appointed by the mayor and aldermen, but elected their own foreman, and made their own rules and regulations, subject to the approbation of the mayor and aldermen. It was the old volunteer department, with a volunteer in command. This led to the very difficulties encountered by Mayor Quincy, particularly as premiums were paid to the ardent volunteers. From and after February 16, 1829, a salary was paid to the chief engineer, and Mayor Eliot, a man of high ability, established the important principle of a paid fire department, in 1837 (city ordinance of July 29, 1837). In 1826 it was found expedient to reorganise the entire force of the fire department (Quincy, Mun. Hist., 203, 264); Mayor Eliot did the same thing in 1837 (see his inaug. addr. of 1838, p. 3). But even the ordinance of 1861 left the choice of the chief and the assistant engineers to the city council, and the appointment of the companies to the mayor and aldermen, each company choosing its own foreman, subject to approval. All this was swept away by the great fire of 1872, and the ordinance of 1873, which required the mayor to appoint, subject to approval on the part of the board of aldermen, a board of three fire commissioners, who appoint the chief engineer and all other members of the department, purchase supplies, and manage the department. The law of June 21, 1831, enabled the city to pay an indemnity to members of the fire department disabled in the discharge of their duties. In 1874 (ch. 61) the Boston Protective department was incorporated, and in 1886 the office of fire marshal was established, this officer, appointed by the State, to pass semi-judicially upon fires.

In 1850 the General Court passed a special act relating to the Boston fire department (1850, ch. 262), the value of the act consisting in the repeal of old statutes, and in leaving the city free to work out its own safety. The city government decided finally in favor of a paid commission. Government by committee had broken down, partly because it was inefficient, partly because it was gratuitous, and mainly because it was irresponsible. Public opinion was not prepared to establish one-man power, and compromised by establishing paid commissions, such as still conduct a large part of the business of the State. The Boston fire commission has given great satisfaction. It is watched very closely, especially by underwriters. At the same time the popular interest in

the department is lively. It is one of the few departments that has found a chronicler. It controls scores of buildings, valuable apparatus and supplies, and a numerous force; the cost of the department is not far from a million dollars a year; yet it has not been found necessary to invoke the State for regulating or reforming the establishment. Twice in the remote past the city government has disbanded the whole department; but municipal authority has sufficed to establish order, discipline, and extraordinary efficiency. One is tempted to affirm that the departments are generally efficient in proportion to the popular interest they command, and that popular opinion is apt to be right. But much is due, also, to the city council, which has created and sustained the fire department, thus proving that a city council, duly informed, is likely to consult the public good. Of all municipal departments created by the city council, the fire department is the most typical. As such it deserves special attention on the part of students devoted to municipal affairs.

Relief and Correction.

The charter of 1822 (sec. 19) required the election, in each ward, of an overseer of the poor, who must be an inhabitant of the ward. The charter of 1854 retained this provision without material modification. But the board of overseers had changed in its powers and duties. When Boston became a city, the overseers were the most venerable corporation, and the only branch of the government that had been formally incorporated. They had charge of the poor, of the degraded, of the insane, and of prisoners. To provide for the poor that could work, the house of industry was built in South Boston. Instead of interesting the overseers in the undertaking, they were alienated, and a long controversy ended in the defeat of the overseers. Then the house of reformation for juvenile offenders was established; also, the house of correction, a lunatic hospital, an almshouse, and a home for neglected children. All these establishments, to which the city hospital might be added, were the natural province of the overseers of the poor. They permitted the establishment of rival boards, the result being that in 1857 all indoor relief, together with the reformatory and correctional institutions, were united under twelve directors for public institutions, and that in 1864 the election of the overseers was transferred to the city council, to pass, in 1885, to the mayor, acting with the approval of the board of aldermen. In 1889 the public institutions were placed

under a board of three commissioners (1864, ch. 128; 1857, ch. 35; 1889, ch. 245).

The overseers hold trust funds amounting, in 1893, to more than $700,000. They devote about $100,000 a year to charity, but maintain a temporary home and a lodge so-called. The real mission of the board is out-door relief. The commissioners, on the other hand, deal with some 3,500 paupers, orphans, truants, insane, and malefactors, at a cost not far from $200 per head. But the complete separation of the unfortunate from the vicious has not been effected, though attempted by Mayor Quincy. On the other hand, the city provides generously for those whom it is required to support. The overseers of the poor have always served without pay; so did the directors for public institutions from 1857 to 1889. The board of directors included three members of the city council, elected annually, and nine citizens at large, three of whom were annually elected for three years. Of course, a board so composed was apt to lack that force which is specially required in dealing with thousands of unfortunates and criminals. But the fault lay largely in the law. It was to oppose the overseers of the poor that the General Court was induced to establish a separate board of directors for the house of industry, in 1823 (1822, ch. 56). In 1824 separate directors for the house of correction were authorized by the General Court (1824, ch. 28). In 1825 another board, for the house of reformation, was authorized (1826, ch. 182). In 1827 the directors of the house of industry were given the same power as to paupers that overseers of the poor had; but the Boston overseers were not deprived of this power (1826, ch. 111). The wonder is that the work of dealing with the unfortunate and vicious did not itself become more unfortunate. Had the General Court required the city to work out this problem, the city would have supplied the means. Nor is it ever well to invoke the General Court, when municipal means will answer. Municipal problems are best solved by municipalities, not by outside power. It is safe to add that true municipal reform, when needed, must come from within. The new city was mistaken when it created several departments to do the work of one inherited from 1691.

It was competent for the city to establish a house of industry, in which to house and employ its paupers; but law, tradition, and propriety vested the management of the enterprise in the overseers of the poor. It was an unfortunate precedent when a rival establishment, with like powers as the overseers had, was set up. The law of Febru-

ary 3, 1823, under which this step was taken, has not proved a benefit, least of all in the general policy it established. The city government had the highest interest to keep down the number of independent administrative departments; by pursuing the opposite course, it has surrounded the mayor of Boston with a cabinet as large as a town meeting. The President of the United States has a cabinet of eight men; the mayor of Boston of about a hundred. That the General Court consented, is natural, as it must take its Boston information from Boston, not from Berkshire. Nor were the overseers blameless. They did not think it their duty to cooperate with the city council, and set up the idle claim that they were not accountable for their expenditures. Yet the charter provided, and still provides (1821, ch. 110, sec. 20; 1854, ch. 448, sec. 51), that all boards and officers of the city, "entrusted with the expenditure of public money, shall be accountable therefor to the city council, in such manner as they may direct." The city council, therefore, had the right to ask very close questions wherever money of the city was involved, and might have extended its enquiries to school and county matters. The claim of the overseers was not tenable, and led to their own defeat (compare Mayor Lincoln's inaugural address, 1859, page 21). The results continue in 1893, and so does the needless multiplicity of rival departments. The seed was sown in the charter; the city council and the General Court have added indiscriminately. What harvest could they expect?

Police Department.

The charter vested "the administration of police" in the board of mayor and aldermen (1821, ch. 110, sec. 13). The charter of 1854 prescribed that appointments should emanate from the mayor, then to be acted upon by the aldermen (1854, ch. 448, sec. 49), while in all other cases the aldermen were to act first (sec. 48), when the mayor and aldermen were required to act (see also 1821, ch. 110, sec. 21; 1882, ch. 164). The term "police," as used in the charters of 1821 and 1854, did not mean "police officers" or "police force," but had reference to the general good order of the municipality. Even the Revised Statutes of 1836 do not mention any police force or police officers. In fact, the first law of the State authorizing the appointment of "police officers" in Boston, was passed in 1838 (ch. 123), and the first law authorizing cities and towns in general to make such appointments, was not passed by the General Court until 1851. Boston had acted in the premises soon

after the Province reign was ended, the confusion occasioned at that time requiring the employment of special officers for maintaining order in the streets. This led to the interesting ordinance on page 66 of the By-Laws of 1786, which authorized the selectmen to appoint officers called "the inspectors of the police," who were day patrolmen. The night watch had been established soon after 1630. The "inspectors of the police" were required to report once a week to the selectmen, and were otherwise inefficient. The selectmen were therefore authorized by the town to elect "one suitable person to superintend the police of this town" (By-Laws of 1801, p. 33). The term police, in this case, meant "good order," and the selectmen could appoint "assistants to the superintendent" (l. c., 34), that is, appoint day policemen, if necessary, provided there was money to pay them. The chairman of the board of selectmen was usually chosen superintendent of police, and the mayor and aldermen, in 1822, inherited the police arrangements of the town. They inherited also the night watch, which, under the law of January 29, 1802, had been appointed by the selectmen. The mayor and aldermen took charge of the day police and the night watch because these establishments had been under the care of the selectmen, who appointed them. The common council tried repeatedly to get concurrent power over the police, but failed; the legislative power the common council shared with the mayor and aldermen was not well exercised, least of all by the common council.

The city council maintained separate watch and police departments to the year 1854. In 1823 a special head for the day police was established, under the name of city marshal, who was also tithingman and constable, and soon took charge, in a measure, of street cleaning and the removal of house refuse, the ordinance of 1833 providing that "the department of internal and external police, as far as it regards the preservation of the health of the city, be placed under the superintendence of the city marshal" (code of 1834, pp. 174, 226). The captain of the watch, on the other hand, took charge of the street lamps. When the night watch and the day police were united, in 1854, the lamp department became a separate establishment, with a separate superintendent, but continued under the special control of the mayor and aldermen. The removal of house refuse and street refuse, after consideration, was treated, the former as a health matter under the jurisdiction of the city council (1821, 110, sec. 17), and street refuse as a police matter to be regulated by the mayor and aldermen only (l. c., sec. 13). This dis-

tribution of power is related by Mayor Quincy with great spirit (Mun. Hist., 62–73). The real work drifted into the hands of the superintendent of streets, who had teams to work with. The ordinance of 1833 made the superintendent of streets a general officer for paving and repairing streets, for laying out and widening them, for building and repairing sewers, for the repair of public buildings, the school houses included, for supplying fuel, and "for cleaning the streets, disposing of manure, and removing house dirt" (code of 1834, 260). The superintendent of streets attended to this police duty until 1853, when a separate department for "cleaning the streets, disposing of manure, and removing house dirt and house offal" was established and placed under a "superintendent of the health department." From 1890 to 1891 this officer was called "superintendent of sanitary police" (Rev. Ord. of 1890, 55), then to be merged again in the street department, the head of which is called superintendent of streets (ordin. of March 9, 1891). The confusion of the departments was due to a confusion of terms. From 1834 to 1837 the city marshal was superintendent of sewers (code of 1834, 246). As late as 1867 the aldermen had a committee on external health, and another on internal health. The term police was used by the charter of 1822 in a very general sense, but soon acquired the narrower meaning of police officer, without losing the law sense that recurs in the term "sanitary police." In some instances the terms health and police were used as identical, even by Mayor Quincy, and the city marshal was actually the health officer of the city, under the ordinance of October 7, 1833 (code of 1834, p. 175). The health ordinance of May 31, 1824 (code of 1827, p. 170), was entitled "an ordinance relative to the police of the city of Boston."

The chief impulse for establishing a regular police force in Boston came from Mayor Eliot, who has left his impressions in other branches of the city government. But it was an error to leave the appointment of all police officers with the mayor and aldermen. Before 1838 the night watchmen were the principal police force. When Mayor Quincy retired from office, he exclaimed: "The name of police officer has indeed been changed to city marshal. The venerable old charter number of twenty-four constables still continue the entire array of city police; and eighty watchmen, of whom never more than eighteen are out at a time, constitute the whole nocturnal host of police militant, to maintain the peace and vindicate the wrongs of upwards of sixty thousand citizens" (Mun. Hist., 272). Later the city marshal was given

deputies to aid him, but the constables continued the chief peace officers. After the act of 1838 (ch. 123) the appointment of regular police officers began; but the first Municipal Register, of 1841, enumerates all police officers in two lines (p. 89), and in 1854 the force numbered but 47 men. After the union with the watch, which took place on May 26, 1854, the department consisted of 236 men. When it passed under the control of commissioners, the force was about 700 strong, every man appointed by the mayor and aldermen. Well might Mayor Cobb ask to be relieved of this business; well might he say that "the affairs of this department cannot be properly attended to by the committee on police" (Inaug. Addr., 1876, 21). Mayor Lincoln had expressed another view in 1864 (Inaug. Addr., 25). It was finally under Mayor Pierce, and in part on his suggestion, that the police department was placed under three commissioners, appointed by the mayor and aldermen. At the same time the new commissioners were given the power to grant liquor licenses, which is not, perhaps, a police duty (1878, ch. 244; Mayor Pierce's Inaug. Addr., 1878, p. 20). With unconscious rashness the whole "administration of police," as mentioned in the charters of 1822 and 1854, was transferred from the aldermen to the new board.

The new board was destined to have a stormy career. The civil-service law of 1884 had not been passed, the commission was exposed to the whole force of municipal pressure. In seven years it had ten different members, and in 1885 it was superseded by a board of three members, appointed by the State. They are appointed for five years, and the first change in the membership of the board was made in 1893. The law requires the board to be selected from the "two principal political parties," the members of the board cannot be removed without the consent of the governor and council, and the expenses of the board in the administration of their department must be paid by the city. The number of patrolmen, and their pay, cannot be increased without the consent of the city. The board, as far as the city had any power to part with, holds all the power vested in the previous board on June 12, 1885. The city council may grant additional power. The members of the police force hold the power of constables and watchmen, as exercised ever since the days of the Colony. The principle of a board appointed by the Commonwealth, in the exercise of the constitutional right vested in the Commonwealth, but paid by the city, has been called in question, especially as interfering with municipal self-govern-

ment. On the other hand, the city has had the benefit of a quiet and efficient police service, and the political complexion of the board has not occasioned the evils it appeared to invite. For the board is professedly a body made up of party men. Financially the arrangement has worked well, as a comparison with the kindred fire department shows. A government machine that works well, and satisfies a public want, justifies itself. But it is never well to invoke the country for redressing the evils of the city, and a city is not doing its whole duty when it occasions interference from the General Court. The latter should not be invoked by the city, except to give strength or relief, after the resources of the city and the citizens are exhausted. Nor can the supreme power ever relieve the citizen and the city of their public duty, including that of caring well for their own.

Health Department.

The history of the Boston health department, as made by the city council, is mournful, and proves conclusively that the charter of 1822 made a mistake when it transferred the power of the old board of health, established in 1799, to the city council, to be exercised at pleasure (sec. 17). The law under which the early board acted was exceptionally good, and the elective board showed great efficiency (see By-Laws of 1818), though Mayor Quincy holds the opposite view (Mun. Hist., 64). From the adoption of the city charter, in 1822, to 1847, the city council was the board of health. Then the mayor and aldermen were the board of health until 1873, when a better arrangement went into effect. The charter of 1822 did not contemplate that the council should be an executive board, but provided expressly that the health power vested in the city council should be carried into execution "by the appointment of health commissioners," or in some other way. The Revised Statutes of 1836 said instead: "In the city of Boston, the city council shall exercise all the powers, and perform all the duties, of a board of health for the said city" (ch. 21, sec. 2). It is worth adding that the Revised Statutes, being the first codification of the Massachusetts statutes, were the work of Theron Metcalf and Horace Mann. The clause, due perhaps to the dim ideas then entertained of municipal government, was repealed April 23, 1847, and on June 8 of the same year the city council appointed the mayor and aldermen health commissioners for the city (Mun. Reg., 1848, 46, 83). They continued to be the nominal board of health until 1873, although the laws of 1849

(ch. 211) and 1854 (ch. 448, sec. 40) persisted in making the city council a board of health, with power to delegate their authority, as a board of health, to "any committee of their number." The city council delegated its power to the mayor and aldermen (code of 1851, 102; code of 1863, 306), but created the superintendent of health, in 1853, to carry out all laws and ordinances relating to "the subject of internal health." This confusion ended in 1873, with the appointment of the board of health.

Of course, neither the aldermen nor the city council could do executive health work. In 1824 the work was divided between a health commissioner, who attended to "the external police" or health, especially quarantine matters; a superintendent of burial grounds; and the city marshal, who had control of "the internal police" or health (code of 1827, 170; Quincy, Mun. Hist., 73). In 1833 the city marshal was given control of all health matters, and up to 1853 he was virtually the Boston board of health. The duty of street cleaning and the removal of house refuse was transferred, in 1825, to the superintendent of streets, who performed that duty until 1853. In 1834 the city council treated sewers as a health matter, and required the city marshal, the police officer of the city, "to take the general superintendence of all common sewers" (code of 1834, 246, 174). In 1837 the office of superintendent of sewers was created, thus relieving the city marshal; but the first Municipal Register issued by the city, in 1841, treated the superintendent of sewers, the superintendent of streets, and even the surveyors of highways as parts of the "health department." So did Mayor Lyman in his inaugural address of 1835 (p. 11), as far as sewers are concerned. The division of quarantine, meanwhile, had drifted under the control of a physician, and the superintendent of burials continued his special work. To promote executive efficiency, then, the early city government abolished the board of health, which should have been retained, and divided its power among three departments newly created, but not defined, for in the city the health duties of the city marshal, the superintendent of streets, the sewer department, and the two branches of the city council were commingled. The city marshal, however, was the health officer of Boston from 1823 to 1853, while the superintendent of streets, from 1825 to 1853, removed the street and house refuse.

To terminate this confusion as to "internal health" or police, the city council of 1853 created a superintendent of the health department,

requiring him to execute all laws and ordinances relating to "the subject of internal health." In truth, the superintendent had charge of the city stables and teams, and attended to street sweeping and the removal of house dirt. Later ages will wonder how such a department ever came to be called a health department. Mayors Shurtleff and Gaston (inaug. addr., 1869, 30; 1870, 52; 1872, 18) insisted that street cleaning was one thing, and that the city needed a professional board of health. Mayor Gaston approved the ordinance of December 2, 1872, under which the health power of the city was transferred to a board of health, consisting of three men. They were to serve three years, and the arrangement has worked well, mainly because the ordinance was reasonable, although it continued the "superintendent of health," as a subordinate of the board, requiring him to "make all necessary arrangements for cleaning the streets, disposing of manure, and removing house dirt and house offal, to the entire satisfaction of the board of health" (code of 1876, 403). The Revised Ordinances of 1885 made the superintendent of health once more an independent officer, appointed by the mayor, subject to approval on the part of the board of aldermen, and popularly his division was known as the health department (auditor's finance report for 1889–90, 97). In 1890–91 the establishment was called the department of sanitary police, to be merged, by the ordinance of March 9, 1891, in the street department, which still calls the removal of house refuse its "sanitary division," beside having a street-cleaning division (rep. of street department for 1891, 1–2). The board of health, on the other hand, has become a great department. It holds all the power of the former board, with some additions. Its quarantine service is good, and beside having charge of cemeteries and undertakers, public baths and lying-in hospitals, the the abattoir, stable permits, and hawkers, it guards the general health of the city. When the city of Boston decides not to have more departments than the government of the United States, the health department may include the inspection of milk and vinegar, the inspection of provisions, the registry department, and possibly the hospital department. Certainly there is no reason why the city should not have entrusted absolutely all health matters to the board of health, which has so amply justified the ordinance signed by Mayor Gaston. It is pleasant to add that the chairman of the board in 1893, Dr. Samuel H. Durgin, has been a member of the board from its establishment in 1873, and that the publications of the board have some scientific value.

Taxation.

The city charter vested the power to lay and assess taxes in the city council (1821, ch. 109, sec. 1; ch. 110, sec. 15, 28; 1822, ch. 85). The city council discharged this duty with reasonable judgment, having good precedents to go by. As early as 1694 the town chose assessors separate from the selectmen, and in 1802 the law authorized the town to elect two assistant assessors in each of the twelve wards, the assistants electing the three principal assessors. This law was repealed by the charter, and from 1822 to 1885 the city council chose all assessors of taxes. The number established in 1802 was not changed until 1849, and by the ordinance of October 24, 1850, the distinction between first and second assistants was virtually established. In 1866 the board of principal assessors was increased to five, and so remained until the ordinance of April 20, 1891, required the appointment of nine assessors. The institution of assessment districts, together with first and second assistants for each, was established by the ordinance of January 3, 1868, due to the annexation of Roxbury, and in 1880 the principle of electing assessors for three years was established. The law of 1885 (ch. 266) transferred the appointment of assessors to the mayor, subject to approval by the board of aldermen, and the appointment of assistant assessors was left to the assessors (Rev. Ord. of 1885, 55; but see St. 1885, ch. 266, sec. 1), it being the apparent policy to vest great power in heads of departments. The city councils, from 1822 to 1885, acted conservatively in this matter, especially as regards the choice of principal assessors.

As under the town, the assessors were the first city department to administer State law only, the city supplying merely the means for carrying the tax laws of the State into local effect. Massachusetts taxes wealth, and the Boston assessors were among the first to tax wealth at its real value as nearly as the market can indicate value. That personal property largely escapes direct taxation, is not the fault of the assessors. Neither is it their fault that the principle of municipal or special taxes has been discouraged in Massachusetts. The vast privileges conferred by the city, therefore, have not yielded fair returns to the corporation as such. The assessors tax the wealth they find, and out of the general levy on wealth nearly all municipal expenses are defrayed. As these expenses are heavy, the tax is heavy, the principle of special assessments or of fees for special rights or services having

been discouraged. But the tax actually assessed is apparently borne without hardship, payments being prompt. Up to the war period the expenses of the city and county were relatively light. For the year ended April 30, 1862, the city and county expenses, including the State tax, were $3,438,651.91, against $5,203,706.55 for the next year. But during the first year the premium on gold did not touch 105, while in the second year it rose above 172. Municipal expenses grew very high when Boston saw fit to annex the suburbs, while the premium on gold melted away. In the year preceding annexation, when Boston had about 200,000 inhabitants, expenses were $6,532,619.77, and the gold premium rose above 167. During the first year after annexation, when the gold premium did not go above 117, and the population was 341,919, municipal expense reached $15,388,632.28. On April 30, 1867, the net debt of the city was $8,558,281.59; on April 30, 1874, it was $27,473,213.02. All this is not due to annexation; but during the years of annexation Boston began its present scale of municipal housekeeping.

Ten years after this period, in 1885, an accident led to a law (1885, ch. 178) limiting both the debt and the tax of Boston. This interesting law has prevented the Boston tax rate from being 17 per thousand of assessed property, which was the rate in 1884, but has not checked generous expenses. The law desired the net debt of the city to be within 2 per centum of the average valuation. On this basis the net debt, on January 31, 1893, ought to have been within $16,386,264.04; it was reported by the auditor at $21,323,238.11 (ann. rep., 1893, p. 8, 9), this amount not including the debt for water supply. The General Court of 1885 laid down a strict rule, and its successors from 1886 to 1892 authorized the city to incur debts amounting to $28,806,469.69, to which the fine resolutions of 1885 need not apply. The auditor reports the net debt of the city (funded debt, less means to pay), on January 31, 1893, at $30,908,879.14, which includes the debt for water supply, and is nearly four per centum of the average valuation for the preceding five years, less abatements. Against this stand the vast assets of the corporation, briefly alluded to in Mayor Hart's inaugural address of 1890, p. 13. For the amount of interest and sinking-fund requirements of the city, see Mayor Hart's inaugural address of 1889, p. 10. It should be remembered, also, that the city debt includes the county debt, and that the city tax includes the county and State tax. That debts are an evil, need not be stated; nor that the prudence of a gov-

ernment is measured by the degree to which it meets current requirements from current revenues.

Voting.

As the right of suffrage in Massachusetts could not be exercised, until 1892, except upon the payment of a tax, it was natural that the assessors should make out the lists of voters. The city charter placed this duty upon the mayor and aldermen; and Mayor Quincy, always energetic, seems to have personally revised such a list, "subject to the revision of the board of aldermen" (Mun. Hist., 237). The list contained about twelve thousand names. The list of 1892 contained but 87,227, or a smaller proportion, notwithstanding the tax requirement upon voters had been abolished. Mayor Quincy may have thought that mayor and aldermen meant chiefly the mayor; after his time it meant chiefly the aldermen, and Mayor Shurtleff tells in his last inaugural address how the aldermen made voting lists (1870, 35). They let the faithful city clerk do the work, of course with the aid of the assessors. Annexation made this arrangement impossible, and in 1874 (ch. 60) the duty of preparing lists of voters was transferred to a board of three registrars. These registrars and their assistants are not allowed to hold any other office, and since 1890 they are required to represent political parties (1893, ch. 417, sec. 28, 33). When such a man quits the political party "which he was appointed to represent," he must be removed from office, says the statute (l. c., sec. 29). How the politics of a clerk can be ascertained under the guarded secrecy of the ballot, established in 1889, the law does not indicate. But it provides that assessors shall send their assessment lists to the registrars (l. c., sec. 16, 17), which lists must contain the names of all men of the voting age, and of such women as make written application therefor.

The law intended from the outset to guard the registrars of voters, but could not separate them from other offices. Even after the repeal of the tax requirement upon voters, the assessors' list of persons to be taxed is justly made a basis for registering voters; for the assessors go from house to house to learn who should be taxed, and the city requires them to keep "a full and complete record of the name of each person having a residence in the city of Boston, and his present and past residences" (Rev. Ordin. of 1892, 21). The State requires every male of the age of twenty years or above to be taxed; women of the voting age may be taxed, and in case they hold taxable property must be

taxed. Registrars are justly required to help in enforcing the tax laws (1893, ch. 417, s. 21). It is not quite certain, therefore, that it was best to make them an independent department, and that an attempt to reduce the many independent departments of the city might not make the registry of voters a bureau under the assessing department. The government of the United States requires many executive offices, but nearly all are subordinate to one of the eight cabinet officers. The work of the registrars of voters is largely ministerial, and a ministerial office should not be made an independent department. The government of the United States requires good work of the coast survey and the mint, but has properly subordinated these offices. It is pleasant to add that the Boston voting list is very accurate, especially in the case of naturalised voters, whose names are not entered, save upon adequate evidence. The present ward lines of Boston were established in 1875–6, previous divisions having been made in 1715 (eight wards), 1735, 1805, 1822, 1838, 1850, and 1865 (always twelve wards). The annexed cities and town were treated as new wards, until 1875–6. Precincts, for voting, were not established until 1878, the number being 107, until 1889, when it was increased to 286, to be reduced in 1890 to 205.

The city charter accepted the suffrage requirements of the third amendment to the Constitution of Massachusetts (the amendment was adopted in 1821) as the proper test for municipal voters. The ancient difference between State suffrage and municipal suffrage was thus swept away, to be restored in 1879, when women were given the right to vote for school committee. The General Court may establish municipal suffrage at pleasure, while State suffrage is regulated by the Constitution. The male inhabitant of the Province was not replaced, until 1821, by the citizen; nor, until 1857, by the legal voter, who must be a citizen as well as an inhabitant. But the poll tax as such never had anything to do with voters as such. The poll tax is still assessed on minors, and until 1844 it was assessed on all males "between the ages of sixteen and seventy years." In 1855 the constitution was so amended as to establish the principle of plurality elections, in the place of the majority previously required by candidates. For town, city, and county elections the plurality rule had been previously adopted, on February 27, 1854 (1854, ch. 39). The publication of election returns used to be left to private enterprise. In 1875 the Boston registrars of voters issued a sheet showing, by wards, the number of names registered for the city election of 1874. The number was 57,045; the

total vote for mayor was 18,733; yet the city had about 330,000 inhabitants. In 1822, when Mayor Phillips was elected, the entire vote was 2,650, in a population of more than 45,000. For the national election of 1892 the registrars report the Boston vote at 74,883, and the number of registered voters at 87,227, while the population was about 460,000. For the votes of the mayors, see the Catalogue of the City Councils XXXIII (published in 1891). The registrars of voters issue annual reports. In 1888 (ch. 436) the law established the principle of ballots supplied at the public expense, of elections conducted entirely by public officers, and of secret voting. This arrangement, popularly known as the Australian ballot, was first used at the November election of 1889, for State officers, and met a public want, especially on the part of candidates for office and of all persons who desired orderly elections. A code of all election laws was presented in the acts of 1893, ch. 417. Occasionally the charge of fraud or corruption has been made in regard to Boston elections, but always without evidence. The elections, or the contrary, show great intelligence and independence on the part of voters.

Finance Departments.

The financial departments of the city were greatly simplified by the charter. Previously there were separate treasurers for the town and county, and the town collectors were separate from the town treasurer. Until 1811 the collectors allowed a discount to tax payers who paid within three months after the delivery of the tax bill. The city charter vested the appointment of the city treasurer in the city council (1821, ch. 110, 18), and the supplement of the charter (1821, ch. 109, sec. 12) made the city treasurer the treasurer of Suffolk county. He was also collector of taxes until 1875 (ch. 176), and as such appointed deputies, while up to 1822 the constables were the real collectors, police and peace officers. Since 1875 the office of the city treasurer, therefore, performs mostly ministerial duties. Unless otherwise ordered, the city treasurer holds the trust funds devised to the city, the amount on January 31, 1893, being $578,932.11. He receives the same salary as the treasurer of the United States ($6,000). The collecting department has been remarkably successful in collecting taxes and other sums due to the city, except poll taxes. This may be adduced as a justification of the tax system that prevails in Boston and Massachusetts, and makes any material changes difficult. Those that ought to pay special

taxes or fees oppose the change, and the community as a whole appears to favor the payment of all municipal expenditures from the general tax levy. But this system, inherited from the remote past, invites special appropriations and demands for special work. Special work done by the city for special interests should be specially paid for. The amount of special collections in Boston is slight. The tax year begins on May 1; the finance year of the city and town began on the same day, except from 1823 to 1825, and since 1892, when it began on February 1. From 1823 to 1825 it began on June 1.

Under the town government all finances finally drifted under the control of the selectmen, the overseers of the poor, and the board of health, who constituted the committee of finance, and acted as such since 1812, though the town meeting elected annually three auditors of accounts (code of 1818, p. 4). These auditors simply took a final look at the accounts before they were published. The charter supplement (1821, ch. 109, sec. 14) authorized the city to appoint an auditor, and an ordinance to that effect was passed on August 2, 1824. By a curious anomaly a separate board of accounts was established for the county courts and prisons (1821, ch. 109, sec. 9). This board, consisting of judges, was replaced, in 1866 (ch. 117), by the board of aldermen, who acted until 1879, when the city auditor became county auditor,—an office that should have been assigned to him in 1824 (1879, ch. 256). A greater anomaly is the fact that Boston became a city to get rid of county interference, and then let all county matters drift away from city control. The charter supplement (1821, ch. 109, sec. 13) vested the laying of county taxes in the city council, and permitted county taxes to be treated as city taxes (see also 1822, ch. 85); yet the city council chose to neglect county matters, and so occasioned the constant interference of the State with this subject. Originally (1821, ch. 109, 4, 5) the salaries of the police court and its clerk were fixed by the city. As the city council neglected county finances, the General Court took charge, the result being that county expenses have become rather onerous. This unsatisfactory condition could have been avoided, if the city government had given due attention to county affairs. It was more attentive to city finances proper. To meet all public indebtedness, the ordinance of December 28, 1840, required the annual purchase of three per cent. of the city debt, which from the days of Mayor Quincy (Mun. Hist., 274) to 1870 was managed by a special committee. The ordinance of December 24, 1870, created the board of sinking-fund commis-

sioners (Mayor Gaston's inaug. addr., 1871,11), but did not prevent an alarming increase of the city debt, the fire of 1872 and the annexations adding to its growth.

The ancient committee on the reduction of the city debt, consisting of the mayor and two members of the common council, established on April 23, 1827, had acted with ability and success. They had excellent ordinances to aid them. The sinking-fund commissioners are ministerial officers. The ordinance of 1870, which created the board, laid down the rule that loans for public buildings should run ten years; loans for street widenings and improvements were to run twenty years; loans for the water supply were to run thirty years. These loans were to be provided for by paying into the sinking fund, respectively, six, three, and one and a-half per cent. on each. The General Court, alarmed by the increase of municipal debts, provided in 1875 (ch. 209) for sinking funds in general, and required at least eight per cent. to be set aside against ten-year loans, and enough against other loans to cancel them at maturity. The same law provided that water loans should not run above thirty years, sewer loans not above twenty years, and all other loans not above ten years. The city requires eight per cent. on ten-year loans, three and a-half per cent. on twenty-year loans, and two per cent. on thirty-year loans (code of 1876, 320; Rev. Ordin. of 1892, 70). The court-house loan the General Court permitted to run fifty years (1885, ch. 377) by which time the present building and its furniture will certainly be inadequate; fifty-year park construction loans have also been authorized (1891, ch. 301; 1886, ch. 304). A catalogue of the city debt, on January 31, 1893, appears in the annual report of the auditor, 1893, p. 170–201. It should be stated that the city has always met its debt at maturity, except twice, in the case of water loans (l. c., 190), and that its debt management was best, perhaps, when it rested entirely with the city. The water debt has always been treated as a separate establishment, and was the first to have a sinking fund by that name (1846, 167, sec. 11). In 1882 (ch. 133) the General Court wisely permitted the annual payment of loans or loan certificates, instead of requiring the accumulation of sinking funds, provided a given loan is thus cancelled at maturity. This arrangement is not favored, but is preferable to a sinking fund.

Superintendent of Streets.

The administrative departments traced in the preceding pages are mentioned, if not founded, in the charter of 1822. But the charter

could not keep them from a tortuous course. The departments created by ordinance were not more fortunate. When Boston became a city, the duty of paving and repairing all streets and ways was found to rest with the surveyors of highways, while the selectmen could widen, lay out, and discontinue such ways, though the court of sessions also had the power to lay out highways. The mayor and aldermen inherited the power of the selectmen and the sessions, and greatly desired to be surveyors of highways, the more so because the selectmen had usually acted as surveyors. But the city council of 1822 elected three surveyors of highways, and it took much pressure to make the common council recede from its desire to have some control of street work. A citizens' meeting was held, a law was passed by the General Court (Quincy, M. H., 65), and in 1823 the mayor and aldermen became surveyors of highways. They divided the city into four districts of three wards each, and, in the words of Mayor Quincy, "appointed two aldermen superintendents of each district." This arrangement gave way, in 1835, to the committee on paving. From 1835 to 1885 that committee ruled over the streets of Boston, wielding great power and expending vast fortunes. In theory the mayor and aldermen were the surveyors of highways from 1823 to 1854, and the aldermen alone from 1854 to 1885 (1854, ch. 448, sec. 41). The law of 1885 (ch. 266, sec. 6) undertook to separate the executive powers of the highway surveyors from their legislative and judicial powers, if any. In fact, the mayor was made surveyor of highways, and as such wields great power (see also 1893, ch. 423, sec. 21, 22).

As early as May 23, 1825, the mayor and aldermen appointed a superintendent of streets, and made him their agent for general street work. As they obliged him to do much additional work, such as repairing school houses, the common council insisted upon having a voice in appointing the superintendent. The ordinance of April 23, 1827, provided for his annual election and prescribed his duties. Up to 1885 he was elected by the concurrent vote of the two branches of the city council; since then he is appointed by the mayor, subject to approval on the part of the board of aldermen. Up to 1885 he was the special agent of the aldermanic committee on paving; since then he is the special agent of the mayor. At first the superintendent of streets had charge of laying out and widening, of paving and repairing streets, of all common sewers, of cleaning streets and removing house dirt, of the public buildings, the public wells and pumps, and whatever else the

aldermen might direct, though up to 1854 the mayor had some authority over the superintendent. As a curiosity the health ordinance of May 31, 1824, "relative to the police of the city of Boston," may be mentioned. It ordains that "the department of internal police be placed under the superintendence of the city marshal," and that "to this department shall belong the care of the streets, the care of the common sewers, and the care of the common vaults, and whatever else affects the health, security, and comfort of the city" (code of 1827, 170–1). In 1834 an ordinance required the city marshal "to take the general superintendence of all common sewers" and even to make plans of them (code of 1834, 246). The actual work on public sewers, however, was done by the superintendent of streets (l. c., 261), and the sewer assessments made by the city marshal proved an illusion.

The duties assigned to the superintendent of streets could not be discharged by one officer, however diligent, and by the ordinance of June 6, 1837, the office of superintendent of sewers was established, relieving the superintendent of streets of much work, and the city marshal of inspecting, accounting and drafting he was not well qualified to manage. The sewer department has always been interesting for the attempt it made to assess the cost of sewers, in part or altogether, on the abutters or immediate beneficiaries. On the whole, the attempt has failed in a city that paid all public expenses from the general tax levy; the town, however, had never treated sewers as a town affair. In 1840 the care of the public buildings was transferred from the superintendent of streets to the superintendent of lands (ordin. of September 17, 1840), and in 1846 an independent superintendent of public buildings was authorized (ordin. of December 24, 1846), who has charge, also, of the fuel for the city. By the ordinance of April 26, 1853, finally, the city stables and the work of street cleaning, as well as the removal of house refuse, were transferred from the superintendent of streets to the superintendent of health, so called. The ordinance of March 9, 1891, again united the street, sewer, health or sanitary-police, and bridge departments (the latter having been authorized in 1828, 1870, and 1885, respectively) under the superintendent of streets. Possibly the work of the street commissioners, the board of survey, the lamp and ferry departments might have been added. At any rate the first superintendent of our streets was required to do the work now assigned to the board of survey and the street commissioners (see also Quincy, Mun. Hist., 194).

Additional Departments Established Before 1854.

Law Department.

The city of Boston began, and continued for more than five years, without a law department. The early mayors were learned in the law, yet the failure of establishing a department for interpreting and applying the city charter proved a mistake. In 1827, after some heavy bills for counsel had been incurred, the office of city solicitor was established (ordin. of June 18, 1827). His duties have continued substantially the same, and may be described as those of a business lawyer. The salaries paid at that time to city officers ranged at or above a thousand dollars each. The clerk of the police court received $1,400, and his assistant $700. The city solicitor was allowed $600, the same as the city messenger. From 1839 to 1843 the city solicitor, at that time John Pickering, had the assistance of a city attorney, Elbridge G. Austin. Mr. Pickering served from 1829 to 1846, and was unsurpassed for accuracy. Unfortunately few of his opinions are published; but he overruled many views and precedents he found, and placed the law business of the city on a good foundation. In particular he put an end to the absurd habit of the early city fathers to imitate town usages. The code of 1827 illustrates the early period; the code of 1834 introduces a better age. Mr. Pickering drafted the first part of the Revised Statutes, "Of the internal administration of the government," which still stands, duly amended, in the Public Statutes of the Commonwealth. Before he became city solicitor, he had won fame by his dictionary of Greek, and previous to that he had published his vocabulary of Americanisms. He was easily the most learned man in the service of the city.

His successor, Peleg W. Chandler, was city solicitor from 1846 to 1853, and has left two monuments behind him, the city code of 1850 and the charter of 1854. Of the two, the former is the better. It presents a complete picture of the city laws and ordinances prior to the charter of 1854, and contains some historical references. Mr. Healy was the head of the law department from 1856 to 1882. In 1881 the office of corporation council was created for him (ordin. of March 30, 1881). He was the pupil and partner of Daniel Webster, and himself the Webster of our municipal law. He was not a literary lawyer, and few of his opinions are published. But it was in part due to his sturdy honesty and courage that the affairs of the city were kept untarnished at a time when municipal extravagance was not uncommon,

and corruption sometimes charged against other cities. He was annually elected by the city council; he reigned while government by committee was supreme; his speech was homely; he was incapable of an indirection; but he kept the corporation straight. The law of the corporation, perhaps, deserved no other monument than the name of its honest and faithful servant (a portrait and sketch of Mr. Healy appeared in the Municipal Register of 1882). It is not creditable to the city that its law department continues to be "under the charge of the corporation counsel and the city solicitor jointly" (Rev. Ord. of 1892, 46). The United-States Department of Justice is better arranged. It is to be regretted, also, that all formal opinions given by the law department of the city are not published. They might be an honor to the department and a light to the corporation. The city has had good law at a small cost.

Bridge Department.

On November 3, 1828, the city appointed a superintendent of the free bridge. A few years later a superintendent of the Boston south bridge was appointed. The free bridge is now known as the Federal-street bridge, and the Boston south bridge is called the Dover-street bridge. The principle established by the appointment of the bridge superintendent has proved a source of great expense. In 1857 the city had seven superintendents of as many free bridges; on May 22, 1871, the two bridges to Charlestown, and the two to Cambridge, were added (auditor's report for 1871–72, 19, 71, 81). The Revised Ordinances of 1885 united all bridges, except three to Cambridge, under one superintendent of bridges, who began to serve on April 5, 1886, taking charge of more than twenty bridges over navigable waters. The ordinance of March 9, 1891, placed all highway bridges under the care of the superintendent of streets, thus restoring the establishment to the simple arrangement with which it began in 1828. Meantime the number of bridges maintained in part or wholly by the city is seventy-five, and the total number of public bridges in the city is a hundred and ten (ann. rep. of city engineer for 1892–93, 14). The first bridge that connected Boston with any of its neighbors, Charles-river bridge, was opened to the public on June 17, 1786. Forty years later there was no free bridge in Boston. Exactly a hundred years after the completion of the first Boston bridge, some twenty superintendents of bridges, nearly all elected annually by the city council, were reduced

to the rank of draw-tenders, under a general superintendent, who became a mere division chief in 1891.

Had not Boston yielded to annexation, the history of its bridges might be simpler. South Boston was annexed for the benefit of South Boston, and did not rest until the free bridge of 1828 was accepted by the city, the outlay in the first fiscal year thereafter being more than $3,000. To make the city accept the bridge, the owners paid $1,607, which was immediately required to put the bridge in order. The Dover-street bridge was purchased at $3,500, and then a larger sum was expended on repairs. The Charles-river bridges to Charlestown and Cambridge were obtained on the like principle as the free bridge of 1828. The South-Boston bridges, in particular, were the subject of meetings, debates, divisions, legislation, and great excitement. But South Boston committed the city to the principle that bridges are ways to be maintained, like other ways, out of the annual tax. Later on, in the case of the Charles-river bridges, the same principle was applied to structures connecting the city, not with another part of the city (South Boston), but with the municipalities on the other side of Charles river. Is it inconsistent in East Boston to ask for a free bridge, or, in default of that, for free ferries? To be sure, the people of Boston have had a free road to South Boston since 1828, and across Charles river since 1858 (for historical notes see the code of 1876, 64). To be sure, the city is rich; but New York is richer, and the East-river bridge is not free. The people of Boston and the General Court have always had great faith in the city treasury, and the treasury has justified this confidence. In addition, the city has provided sumptuously for the suburbs whose inhabitants desired to do business in Boston. No wonder the proposition is now made that Boston build elevated roads, tunnels, and tracks of steel in order that the suburbs may have free access to the market they want, and none of the expense that maintains the great metropolis.

Quarantine and City Physician.

The city council of 1824, apparently anxious to delegate as little power as possible, and to increase the number of its servants, undertook to do all the work previously transferred to the board of health. The astonishing ordinance of May 31, 1821 (code of 1827, 170), established three coordinate health departments,—the city marshal, to take care of health in the city; the commissioner of health, to take care of

quarantine matters; and the superintendent of burial grounds. This officer, Deacon Hewes, rose to some importance. The city owned the "funeral cars," and conducted the funerals, took care of the cemeteries, and the superintendent kept the mortality record. The ordinance requiring the city to conduct funerals and to supply the funeral cars, continued until 1869, though the office of superintendent of burial grounds was changed, in 1849, to that of city registrar, which still continues (in 1893). This office is now devoted to the recording of births, marriages, and deaths, the former having been transferred from the city clerk's office. The department, it appears, came from the board of health (code of 1818, 73), to which it may return, unless departments are to be multiplied. The records of marriages and deaths in Boston are strikingly accurate; those of births are not. If the registry department has not served the cause of medical science or vital statistics, it has been careful of all records within its province, and accurate in essentials, the value of the papers being personal and legal, rather than medical.

The board of health, established in 1799, had received from the selectmen all quarantine matters, and did very well. The early city government transferred the general supervision of the quarantine service to a commissioner, who was abolished in 1826 (code of 1827, 177). Of course, the board of health and the commissioner employed a physician to do the work; in 1826 the "resident physician," as they called him, was made the head of the quarantine service. He was called resident physician because he did not reside at the quarantine station, which was Rainsford island, as in the past. In 1841 the resident physician's title was changed to port physician; he was required to vaccinate all suitable applicants, and he was virtually the city physician, though the mayor and aldermen fancied themselves to be the real board of health because they were the nominal board. In 1849 the office of city physician was established (Mun. Reg. for 1850, 85–90); and the port physician was transferred to Deer Island, which was made the quarantine station, and was to contain the house of industry, the house of reformation, and other correctional establishments previously located at South Boston. The quarantine hospital was transferred, in 1866, to Gallop's island, the pearl of the harbor islands. From 1826 to 1849 Dr. J. V. C. Smith was the resident or port physician. He attended to his business, studied local history, and later on was mayor for two terms. Another city physician, Dr. S. A. Green,

was mayor in 1882. The wise ordinance of 1872 restored all quarantine matters, all health matters, cemeteries, and kindred affairs to the board of health, which appoints its own physicians, and has done well, although its jurisdiction might be larger. In a large sense, quarantine and public health are not a municipal subject, perhaps; but the Boston quarantine and health service is good.

Public Lands.

When Boston became a city, it held large tracts of land. Boston owned a township in Maine, and within the city limits it owned large estates at the north end, Fort Hill, and especially some 280 acres of neck lands, so called. These latter became the South End, a name that continued long after Roxbury had been annexed. By filling, the real estate of the corporation was greatly increased, and for sixty years the city was a large operator in the land market. From 1834 to 1880 it had a superintendent of lands, who performed the ministerial duties connected with the preparation of the lands for the market, and their sale. The directing was done by committees, and on the whole it was well done. The system invited malfeasance, yet the city was not defrauded. The ordinance of 1834 (code of 1834, 298) required the superintendent of public lands to sign contracts and agreements, and in case he was prevented authorized the mayor to execute all legal instruments. This illustrates the view the city government took of its power. Nor was it strange that the committees on lands committed certain errors of judgment, among them the costly blunder in the Suffolk-street district so called. This district covers the territory between Pleasant, Washington, Dover, and Tremont streets, about 31 acres, and was nearly all wrested from tide water. But the grade adopted was so low that when additional land was filled in, the Suffolk district could not be drained and was subject to overflows when the tide was high. It had to be raised at an expense of some $2,500,000. Yet when Middlesex street was accepted by the city, in 1831, who could foresee that the Back-Bay basin would be filled in as far as the mill dam, now Beacon street? Very likely the city might have become rich, had its public lands been leased instead of sold. On the other hand, the committee contrived to sell the public lands for immediate improvements of the first order. The policy pursued was not the best, perhaps, but nobody was wronged. A government that does not wrong the people, has nothing to regret. The larger part of the streets laid out by the committee on lands has

borne the test of time, and continues among the best improved estates in Boston. The public lands of the city, not otherwise cared for, passed in 1880 to the street commissioners.

Harbor.

In 1847 the office of harbor master was established. In 1889 the office was wisely transferred to the board of police. The jurisdiction of the police has been gradually extended over the outer harbor as well, and over certain adjacent territory (St. 1864, ch. 50; 1868, ch. 168). The wonder is that no harbor police was had until 1847, and that hardly any harbor legislation was passed until 1837. Up to that time the harbor was generally treated as public property with which men might do as they chose, provided no individual was wronged. The result was that the harbor of Boston was greatly injured; for in the early days of the city the government of the United States did very little for harbors. Harbor lines, beyond which piers must not extend, were first established in 1837 (ch. 229); a map of the inner harbor, with a view to its preservation, was made by the Commonwealth in 1847; and early in the sixties, mainly at the suggestion of Mayor Lincoln, the harbor was surveyed, by the city of Boston, again with a view to its preservation and improvement. Since then the government of the United States has cared for the harbor with great liberality, while the Commonwealth regulates riparian interests, and the city performs police duty. This police duty, it is interesting to think, covers a hundred square miles or more; the original area of Boston proper was less than one square mile. The United States Coast Survey published its first chart of the Boston harbor in 1856.

Minor Departments.

In 1849 the city was first authorized to appoint coal weighers. The law is important to coal consumers, especially such as buy in very small quantities. The city commissions these sworn weighers by the score, and the arrangement works. From the outset the municipal government has supervised weights and measures with skill and care; yet it would have been well to lodge the appointment of all weighers and measurers with the city sealer, and to attach the latter to the police department. The traditional phrase of the General Court in providing for municipal officers of a minor character vests their appointment in

the selectmen, or mayor and aldermen, respectively, the result being that the mayor of Boston has to appoint thousands of officers every year, or more than the greatest care of one man can readily supervise. The city government, on the other hand, made few attempts at consolidating departments and offices, the tendency being rather in the opposite direction, partly, perhaps, on the theory that all appointments have something of patronage about them, and that patronage is worth having. It may have been for some such reason, coupled with the dislike of novelty in public affairs, that Boston appointed a surveyor of hemp as late as 1850, and an assay master as late as 1857. The assay master had to certify, under the law of 1723, that distilleries did not use lead in their apparatus, and the surveyor of hemp had to certify, under an act which expired in 1738, that certain hemp and flax grown in this "province" were "of great service to the crown" (2 Prov. Laws, 737). Perhaps it was the love of creating departments that led the government of 1852 to make its messenger a sort of a department officer, and the Revised Ordinances of 1890 to establish the "city messenger department." Of course, the city government had a messenger from the start, and the selectmen had under the Province, but without establishing a separate department. The superintendence and lighting of street lamps was the duty of the night watch up to 1854, the captain of the watch receiving an allowance as superintendent of lamps. When the watch was merged in the police department, in 1854, a separate lamp department, with a separate superintendent, was created, and is still continued, although the department might be a bureau under the superintendent of streets. The aldermen treated lamps as their special province, and the common council was unable to get a voice in the matter, the law of 1772 having authorized the selectmen to set up street lamps, and the aldermen having been made the heirs of the selectmen, although the city council had the sole right to create the office of superintendent of lamps.

Truant Officers.

In 1850 the mayor and aldermen appointed the first truant officers. In 1873 the appointment of these officers was wisely transferred to the School Committee, and in 1893 the appointment was confined to persons certified by the civil-service commissioners of the Commonwealth. In Colony days the selectmen were the truant officers; in 1735 the overseers of the poor had joint authority; when the city was established,

and Mayor Quincy had his struggle with the overseers of the poor, the city had a great many truant officers, namely, the mayor, every alderman, any director of the house of industry, any director of the house of reformation, any overseer of the poor (Act of March 4, 1826, sec. 3; Act of March 21, 1843), the result being total neglect. Nominally the house of reformation was the truant school; but the authorities of the public institutions were at liberty to transfer inmates from one establishment to another, and unable to effect a full separation of the vicious from the unfortunate. It has been intended to establish a parental school, especially for minors not simply criminal; but the management has not been entrusted to the School Committee (St. 1886, ch. 282). The ancient confusion, therefore, continues; for if there were a parental school, the commissioners of public institutions and the school committee would have joint authority over an establishment nominally parental, but correctional in fact. The subject falls properly under the care of the School Committee, which appoints the truant officers.

Market Department.

Under the interesting ordinance of September 9, 1852, the city appointed a superintendent of the Faneuil-Hall market, since called the superintendent of markets (Rev. Ord. of 1890, p. 67), and previously known as the clerk of the market, the first being chosen in 1649. This is, in one respect, the most interesting office under the city government. The modern city of the Germanic world owes its first character largely to market laws; and a trace of these early laws still survives in Boston (Rev. Ord. of 1892, ch. 43, sec. 60). When markets became a necessity, special laws for regulating them were required. The administration of these market laws and regulations was vested in the market towns; whence the piepowder courts, courts with summary proceedings, and municipal courts, round which gathered the municipal rights and duties that distinguish a market town from other municipalities. The Boston market place retained the medieval law, and a part of it still reigns within the limits of the Faneuil-Hall market. Within these limits the ordinance of 1852 permitted free trade only two days before Thanksgiving and Christmas, respectively. The purpose of the market is to give the people of Boston the full advantage of open competition in the sale of perishable provisions, and to give the farmers within the neighborhood of Boston a certain advantage over distant rivals. A history of the market laws has not been written. In early English

cities the mayor was generally clerk of the market and judge of the piepowder court, whence his popular title "your honor," which still survives in Boston, by a sort of atavism (see G. L. Gomme's Index of Municipal Offices, 11).

Water Department. Engineer and Surveyor.

The Boston water supply has more interest as a financial and engineering enterprise than in law. Up to the present time the work has cost nearly twenty-four million dollars, and is sufficiently vast to transcend mastery by one mind. The literature of the subject is a library. In 1825 the City ordered the first report upon the subject, and in 1834 Loammi Baldwin's famous report pointed to the supply that was taken. In 1846 the proper authority was obtained, and the work begun, Nathan Hale, James F. Baldwin, and Thomas B. Curtis being the commissioners who carried the Lake Cochituate supply to Boston, at an expense of four million dollars. The introduction of water was duly celebrated on October 25, 1848. In 1849 an ordinance established the Cochituate Water Board, to consist of a commissioner, an engineer, and a water registrar who, together with the committee on water, were to manage the great undertaking. In 1850 the board was so changed as to consist of an alderman, a member of the common council, and five citizens at large, who served without pay. The board was chosen by the city council, as were the city engineer and the water registrar, whose offices were created by the same ordinance (Oct. 31, 1850). The city council, then, created three departments, where one would have sufficed. And yet the arrangement worked. The board was faithful, the engineer excellent, and the water registrar all that was wanted, as far as the assessment of water rates was concerned. The first report of the new board, issued in 1852, presented a good history of the establishment.

The commissioners who built the works were also appointed by the city council, but they were paid. They secured the service of E. S. Chesbrough, engineer, and overcame all obstacles occasioned by indifferent regulations and divided authority. The act of 1846, under which the work was done, is interesting, also, for the first mention of a sinking fund in the history of the city government. The sinking fund was controlled by the mayor, treasurer, and auditor of the city, yet it was not well managed. Apparently a part of the water revenue was expended for new construction, and the sinking fund was supplied from

the general tax levy (see the auditor's annual report for 1879, p. 9). In 1877, therefore, this subject was transferred to the board of sinking-fund commissioners. The case shows that at times a good law may operate indifferently, and that an indifferent law will not prevent the right men from doing their duty. The union with Charlestown brought the Mystic water works under the control of the city, and led, in 1876, to the establishment of the Boston Water Board, consisting of three paid members, appointed for terms of three years, respectively, by the mayor, with the approval of the city council up to 1885, and the board of aldermen since. The ordinance provided, also, that the members of the board should not be directly or indirectly interested in any matter or thing connected with the water works (code of 1876, 941). The intent of the ordinance is obvious. Nor has it been necessary to construe the terms. The city has had good water, apparently at a fair price, and certainly without disgrace.

The engineering department owed its origin to the water works, but the bridges, sewers, and parks made it an office of general importance, and the increase in street work led, in 1868, to the separate establishment of the surveying department. This department should have remained a bureau under the city engineer; but the betterment law of 1866 (ch. 174) gave added importance to the aldermen's committee on laying out and widening streets, and the city surveyor was made their clerk. But the "care and supervision" of the office were vested in a special committee, which fixed the salaries of the subordinates, and had the approval of their appointment and discharge. The same principle was applied to the engineering department. The heads were elected by the city council for a year at the time. None the less both departments were efficient, possibly because the publicity of the supervision was a protection. Systematic work was not possible in offices that took their orders from "any committee of the city council," yet the city was well served. As the water department is supposed to pay for itself, it is an open question how far it should employ engineers and other officers paid entirely from the water revenue. Its sinking fund used to get replenished from the general tax levy, and some of its law, engineering, and other expenses are still charged to general appropriations. On the other hand, the water revenue may be used, under the law (St. 1892, ch. 213), for new construction. To have made the water registrar an independent department, which assesses the water rates, seems odd, unless it is proper to multiply departments.

The Public Library.

At the time when the popular interest in public schools was inflamed, the city of Boston received the gift of some books from Paris, and concluded that these documents were a proper nucleus for a free public library. In 1848 the General Court authorized the city to expend not exceeding $5,000 a year for such a purpose. In 1850 Edward Everett offered a thousand volumes of public documents, and Mayor Bigelow $1,000. In 1851 the General Court authorized cities and towns to establish and maintain public libraries open to "the inhabitants thereof," Boston being allowed to expend $28,000 the first year, and about $7,000 a year for maintenance. In 1852 Mayor Bigelow suggested the appointment of a librarian, whose work began May 13, and of trustees, whose first report led Joshua Bates to offer $50,000 toward the library, the city to find a suitable building. In the same year the permanent board of trustees was organized under an ordinance which called also for the annual election of a librarian by the city council. In 1853 the General Court authorized the expenditure of $150,000 for the library, up to December 31, 1856, and $10,000 a year thereafter. In 1854 the library had the services of a librarian, who was chosen by the city council; of trustees chosen in the same way; of commissioners who were to provide the library building; and of the usual committee, with the mayor left off. The circulating department was opened on May 2, 1854. On January 1, 1858, the library building in Boylston street was dedicated; in 1863 the trustees were authorized to appoint the librarian and superintendent, subject to the approval of the city council; in 1869 the trustees received authority to appoint their subordinates, but the city council was represented in the board up to 1885. The law limiting the library expenses to $10,000 a year had been repealed in 1857, and in 1878 the trustees were incorporated, with leave to hold property up to $1,000,000.

In 1880 the State gave a piece of land for the erection of a new library building, at the corner of Boylston and Dartmouth streets, the building to be erected within three years, and to be open to all the citizens of the Commonwealth. This estate has been added to by the city, and in 1887 the trustees were given entire control of the new building, its erection and management. In 1869 the city had authorized them to establish branch libraries; but up to 1863 the ordinance vested in the trustees only "the general care and control of the public library," and in the librarian its "immediate care and custody." So far from

preventing the growth of the establishment were the early ordinances, with their conflict of authority, that those were really the palmy days of the library. The people had found a new idol, the municipality a new mission. The people were passionate in their attachment to the library, and a share of this early love continues, unchecked by the vast expenses incurred in recent years. Apparently the city expends more for its public library than does any imperial government. The services of the trustees are gratuitous.

The Charter, 1822 to 1854.

The charter of 1822 made the mistake of trying to adapt a city to town government. But the difference between direct self-government by the people and representative government is radical. The mistake of treating the two alike still haunts our municipal jurisprudence (Publ. Stat., ch. 28, sec. 2), and illustrates the conservatism of American democracy. If town government and its departments were sacred, they should have been retained, and Boston should not have become a city. Having become a city, the methods of town government should have been abandoned. The charter of 1822 failed in this, and by false conservatism increased the evils it meant to remedy. In theory the principle was established that the city council should have the powers of the town meeting, and that aldermen should have the powers of selectmen. The theory was wrong; for a town meeting is essentially an administrative body, giving specific orders to its agents and servants, while the city council is not the agent and servant of the government, but itself the most important branch of the government. In substance, the charter placed the actual government of the city in the hands of eight aldermen, requiring them only to obtain in some matters the concurrence of the common council. Instead of dividing and distributing the power of the corporation, in a system of checks and balances, the charter provided for the continuance of town offices, and placed the real authority with the aldermen, who were not required to act as a board only, but had great power as individual aldermen.

The framers of the charter were bound to draw a sharp line between legislative and administrative work in the city government; for the very purpose and essence of a representative government consists in "a government of laws, and not of men," as the Massachusetts declaration of rights expressed it in 1780. In a town it is not necessary to legislate much, or to give many permanent orders, because the town

meeting may issue new orders at short notice. In a representative government legislation is of the utmost importance, because the direct self-government of men has been displaced by the indirect self-government through law. In a city government that neglects municipal legislation, the administration will become irresponsible and reckless. Yet our charter of 1822 gave the city council chiefly administrative duties, and reserved the legislative work in good part to the General Court. The charter provided for ward officers, firewards, overseers of the poor, school committee, and the treasurer and auditor; and then vested in the corporation "the administration of all the fiscal, prudential, and municipal concerns" (St. 1821, ch. 110, sec. 1). "The care, custody, and management of all the property of the city" were assigned to the city council (sec. 16), and "the administration of police, together with the executive powers" were vested in the mayor and aldermen (sec. 13). What wonder that every man named in the charter tried to administer and manage? What wonder that Mayor Quincy called the common council the legislative branch of the government, and the aldermen its executive board? What wonder that in the general endeavor to manage and administer, the mayor and the common council were crowded to the wall? What wonder that the city council neglected its legislative duties? It is a wonder that the charter did not work mischief. The government was saved, not by the merit of the charter, but by the character and integrity of the mayor and aldermen.

The standard by which the charter of 1822 should be judged is not the constitution of a Massachusetts town, but the Constitution of the United States, which had been in operation for more than thirty years. Nor is there an essential difference between the governments of Boston and the United States. Both have limited powers; the powers of both can be enumerated; both governments are representative and free. But the Constitution of the United States did not engage in any attempt at saving the offices of the Confederation; neither did it establish executive departments. It divided and distributed government power, and left the rest to Congress and the good sense of future generations. In more than a century it has not been very much changed; the Boston charter of 1822 required amending in 1823, and had received more than fifteen amendments by 1854, when it was revised (see the code of 1850, 453–482). Yet it cannot be harder to make a constitution for a city than for a sovereign nation. The defect of our charter was the imperfect distribution of power, and the implication that the city council

might manage and administer, while the real legislative authority was to be exercised by the General Court. In defense of the framers it should be stated that the administrative sub-divisions of the Commonwealth and the United States are as complicated and confusing as those of Boston, and that the fault lies with the legislative bodies that make them. But in the State and nation the fault is not constitutional; in Boston it is. This fault of our charter consisted in reserving to the General Court certain legislative functions that should have been entrusted to the city council, and in imposing upon the city council administrative duties which should have been withheld. In a representative government it is fatal to let the same body legislate and administer.

The population of Boston had increased from about 45,000, in 1822, to less than 160,000 in 1854; the taxes were less than $160,000 in the first year of the city; in 1853–54 they exceeded $1,500,000. The city did not inherit any town debt, and the county debt left to the city was $71,815; in 1854 the city owed more than seven million dollars, including nearly two millions for general city purposes, except the water supply. Yet the government had been honest. It might have done better; but it was not to be expected that it should do better than the charter prescribed or permitted. And the charter prescribed that the city council should manage and administer in general, that the aldermen should administer and manage in particular. They did; and the people might have fared worse. The public schools, those idols of the plain people, are still managed by a committee of twenty-four, and are well managed, certainly with some ability, great fidelity, and entire integrity. General city affairs were equally well managed under the charter of 1822. To be sure, the early city councils were strikingly unfortunate in their ordinances, as is illustrated in the town code of 1827. But could city councils do much, when anybody and everybody might go to the General Court for Boston legislation? The special laws relating to Boston, and passed by the General Court, are not less than six hundred, and one-fifth of the number was passed from 1822 to 1854. Such an arrangement must be ruinous to city-council work. And the common council was treated with peculiar contempt. The charter did not intend to give the common council concurrent jurisdiction, which is the greatest protection against haste, negligence, and corruption. In 1847 the mayor and aldermen as a board were authorized to make penal by-laws, known as regulations; and the charter revision of 1854

made the municipal power of aldermen supreme, save where they shared it with joint committees. But the responsibility for the unhappy arrangements rests with the General Court. The members of the city government must answer for individual shortcomings, if any; the system, the government, the constitution of the city were not of their making. These were made and marred at the State House.]

Attempts at Reform, 1822–1854.

When matters did not go to the satisfaction of the people, it was customary, in the early days of the city charter, to hold meetings at Faneuil Hall, under sec. 25 of the city charter. Mayor Quincy thought well of these meetings, and considered them a continuation of the old town meeting. They were nothing of the kind. The town meeting could order the town officers; the "general meetings" authorized by sec. 25 of the city charter might advise or censure, but had no power that bound anybody. Anybody could hold such meetings, and anybody could advise or censure the city government, charter or no charter. Those general meetings merely show how useless it was to retain the form of town government, when the substance was gone. Accordingly a new way at reform had to be found. It became customary to get an act passed by the General Court, and to let the people vote upon its acceptance. Of course, the people usually rejected such acts, save where some substantial gain was offered. An act enabling the mayor and aldermen to choose one of their own number superintendent of police, as under the town, and to order ward meetings to be held outside the respective wards (6 Spec. Laws, 84), fell by its own weight. So did a building law, passed in 1827 (l. c., 564), which called for non-combustible or slow-burning architecture, but gave the mayor and aldermen great latitude. In Mayor Eliot's day the people were twice invited to vote on charter amendments proposed by the city government (city doc. 21 of 1837, doc. 5 of 1838). The amendments were rejected.

The reason why these measures were rejected is apparent. The people favor what they think advantageous; all else they view with indifference or opposition. It was not to be expected, in the early years of the city charter, that the people would add to the power of the mayor and aldermen. Why should they? The charter amendments of 1837 and 1838 proposed to transfer the election of the overseers of the poor from the people to the city council. Why should the people

support such a proposition? A more radical measure might have been approved, provided some public gain was to be made. How discriminating a popular vote may be, was illustrated by the treatment of St. 1852, ch. 266. The people rejected the offer to choose aldermen and assistant assessors by wards, but gave the common council concurrent authority, with the mayor and aldermen, when more than $5,000 was to be expended on a county building, or in laying out a street. The people decided correctly that it was immaterial whether they had eight or twelve aldermen, and whether these aldermen were chosen by wards or at large, but that the power vested in the board of aldermen was an important matter, and that concurrent authority should be vested in the common council. Unlike the student or lawyer, the people are indifferent as to form; they are disposed to trust, and are not jealous of power where power is properly vested and exercised. They are disposed to delegate much, and are not pining for the Swiss referendum. But they insist that government shall be orderly and efficient. If the government be orderly, efficient, and creditable, the people are ready to support, to bear much, and to forgive something. But the people have an intuitive dislike for measures not transparently clear and useful. The reforms proposed from 1822 to 1854 were a matter of form, and for that reason could not command public respect.

Nobody floundered more than the members of the government, except the eight aldermen. They used the power they had, and did not complain. They said very little, and during the period under discussion did not even publish their rules of procedure, if they had any. They acted as a legislative board, as a branch of the city council, as an executive board, and as individual executives. The common council demanded more power, but met with opposition both quiet and effective. The concession made by the aldermen consisted in the appointment of joint committees, which rose to such importance that they figure in the charter of 1854 (sec. 40). The charter amendments of 1837 and 1838 had proposed that either branch of the city council, or any committee thereof, should have power to lease or sell city property. This passion for committees was honestly inherited. Under the town, orders were usually carried out by committees. Indeed, the selectmen were a standing committee of the town meeting. Under the city charter all executive and administrative work should have been done, as since 1885, by paid officers. The members of the city council were not so anxious to do work as they were willing to supervise and direct

the work of others, to help in selecting these others, to wield patronage, and to dine or celebrate at the public expense. They have been bitterly denounced for this; but they did not create the absurd system that required the city council to give orders and to manage the execution. The chief sufferer was the mayor. Mayor Bigelow explained this with insight when he retired in 1852. The duties of the mayor, he said after three years' experience, should be purely of an executive character, whereas he presided over the board of aldermen, the school committee, and many other committees, to the exclusion of administrative work. As a member of these bodies he had one vote, and no more. He had no veto power, and as an executive he had about the same power as an alderman, except that he nominated police officers, undertakers, and weighers. Mayor Bigelow (see doc. 80 of 1851) was the first to point out the true reform.

Charter of 1854.

Mayor Bigelow had pointed out that the mayor should be an executive officer, and that he should not be a member of the board of aldermen and the school committee. The city goverment of 1854 undertook to act upon this hint, the outcome being the charter of 1854, which is still in force, though literally reformed by many amendments. The immediate impulse for the new charter came from Mayor Smith and Henry J. Gardner, prominent members of the Native American party. There is no reason why such a party might not produce a good charter. But the charter was drafted under directions from the city council, and the city council was not likely to deprive itself of the administrative powers conferred by the charter of 1822. Nor were the times favorable to sound legislation. The Constitutional Convention of the State, assembled in 1853, had failed of success; the Commonwealth was divided into three or more parties, none of which commanded a majority, and Boston was more divided than the Commonwealth. The contest for the mayoralty, in 1853, had been led by a Whig, a Prohibitionist, and a Know-Nothing, the last named being elected on the third trial. This contest led the General Court to establish the principle of election by plurality vote in all town, city, and county elections, in the place of elections by majority vote that had been in force up to that time (St. 1854, ch. 39). That the General Court should improve the charter submitted by the city council, was not to be expected. It was not apt to have better views of a city charter than the men of Boston.

The new charter, as first proposed, placed the election of the school committee under the control of the city council. This was expunged. In order to make the mayor an executive officer, he was deprived of his vote in the board of aldermen, over whom he was to preside; and it was decided that the term "mayor and aldermen" should virtually mean "aldermen," except that the mayor was to have the qualified veto power over formal votes of the board or the city council, and that he should continue to nominate a few petty officers whose appointment was vested in the mayor and aldermen. These he might also remove. But all important officers, save the police, were chosen and removed by the city council. Over the executive power vested in the aldermen the mayor had no control. Indeed, the only new power given to the mayor was the qualified veto; but every alderman could nominate officers, give information to the city council, direct the department officers, and watch the execution of the laws and orders. The charter was just such an instrument as the aldermen wished, and ought not to have had. It made the mayor a figure head of the administration, it confirmed and increased the power of the aldermen, and virtually established government by legislative committees. The provision that ordinances might carry a penalty up to $50, has not been carried out by the city government. But a term of three years was wisely established for members of the school committee. The number of aldermen was increased to twelve, but the plan of electing them by wards was rejected by the people. As nothing better was offered, the people accepted the charter, but in a light vote. The yeas were 9,166, the nays 990; the population of the city more than 150,000. The proposed election of aldermen by wards was rejected by 5,138 votes, against 4,833 in its favor. At the previous city election more than 13,000 ballots were cast.

The common council attempted to get the same power as the board of aldermen, but failed. Public opinion acquiesced in the idea that municipal business was mainly administrative, that aldermen were the legitimate administrative officers, like selectmen in towns, and that common councilmen might possibly do the work of minor town officers who did not draw pay. The common council itself supported this position by giving much attention to purely administrative work, to the neglect of municipal legislation. The lawyers seemed partial to the prerogative of aldermen, and the germ of power entrusted to the common council was never allowed to develop beyond the state of a modest

bud. Yet the city council had the power of towns, aldermen had only the power of selectmen, and towns were not obliged to employ selectmen as their agents for every kind of town business. The philosophy and jurisprudence of the charter were neglected in the general attempt of the city council to administer and manage as much as possible, and to avoid theoretical questions. In this misplaced endeavor the common council could not compete with the aldermen. It fought for executive rights; the more important field of legislation was neglected, and the great constitutional problems of municipal government were not touched. In fact, whenever important legislation was desired for the city, application was made to the General Court, and the General Court, always partial to special legislation, rarely refused to consider problems which should have been solved by the city government.

The aldermen worked night and day, the common councilmen were faithful, the people could not understand their government. Its fault was not want of integrity or diligence, but constitutional. The mayor, who should have had full executive power, was confined to ornamental speeches. The city council, which should have legislated for all municipal departments and concerns, was required by the charter to administer and manage, and the General Court never hesitated to legislate for the city of Boston. The city, therefore, had three legislatures,— two at city hall, another at the State House. For the aldermen could legislate without the concurrence of the common council. The mayor was to be "taken and deemed" the chief executive officer; but the executive powers of the corporation were vested in the aldermen (not in the board of aldermen); yet the city council was to appoint the principal city officers, and had the care, custody, and management of all city property, as well as "the administration of all the fiscal, prudential, and municipal concerns." The lawyers decided that cities were "created" by the General Court, and the people were too civil to find fault with their creators at the State House, but blamed the city government when taxes or debts were too high, or improvements too slow. They demanded the best that money would buy, and insisted that taxes must be low. With few exceptions all public expenses were met from the general tax levy or loans, and there is still a lurking belief that a government may be rich while taxes are low, or that skill and influence can get improvements for which the beneficiary need not pay. As the city could assess taxes and incur debts without limit, it is greatly to the credit of the city governments and their committees

that the people who pay the bills fared so well. Surely, worse things might have come from a city council that both levied and disbursed the tax, and could borrow millions to satisfy the popular cry for the latest improvements. Future generations will marvel when they read the Boston charter of 1854.

City Hospital.

Before the charter of 1854 went into the effect, the machinery for governing the city was complete. Great ingenuity in establishing a variety of conflicting departments and city organs had been shown. The departments created since then might have been made a part of some department to which the people were accustomed; but the General Court and the city council were determined to create a new department for every kind of work that could be entrusted to new officers and at least one governing committee. From time immemorial the town had established a hospital when occasion required, and the Province had a regular establishment on Rainsford island. This hospital was at first kept by the Province; it was then kept by the town at the expense of the Province; finally it was ingeniously transferred to Boston. When Boston indicated a willingness to establish a permanent hospital, nominally for emergency cases, the General Court hastened to grant permission (St. 1858, ch. 113). The usual committees were appointed; in addition a board of trustees was created, and on May 24, 1864, the city hospital was dedicated. The late Elisha Goodnow had left a bequest of $26,000 for a hospital to be erected in or near South Boston, half the income to be used for free beds; in 1862 the city provided for a board of trustees of the hospital; the building was erected under the joint management of the committee on public buildings, the committee on the city hospital, and the trustees. Between them they laid a very broad foundation, though Thomas C. Amory, jr., chairman of the trustees, confessed at the dedication that, "were we permitted, with our present experience, to recommence our task, the control would be left with a single committee, and to fewer minds" (1864, city doc. 40, 31).

The city hospital has become a whole colony, with more than twenty buildings, and an annual requirement of not less than $250,000 for maintenance. It is well managed, and one of the few city departments that have undertaken to enrich knowledge, and not simply to consume. In 1880 the trustees, now five in number, were incorporated, and have

"the general care and control" of the hospital with all its branches, training school, convalescent home, and out-patient departments. Yet when this enterprise was proposed, in 1849, so distinguished a man as Dr. D. Humphreys Storer, whose opinion was entitled to attention, declared that the institution was not required, and that he was not the only physician who held that view. Mr. Amory comforted his dedication audience in advance, "if our beds are not immediately in requisition," with the statement that the Massachusetts General Hospital received its first patient on Sept. 3, 1821, and "no other application before the twentieth." Of course, a hospital offering the best treatment free of expense was not to be wholly without applicants. The building, when delivered to the trustees for use, had cost $350,000; the expense in the first year thereafter was $113,437, a large part of this being borrowed, while the building was erected almost entirely from borrowed money. The city thus committed itself to expenses not exclusively of a public nature, and the General Court consented. The people rejoiced, and look upon the city hospital with almost the same delight they take in the Public Library. The trustees are not paid, they are appointed for five years each, and they collect from patients that are able to pay. The city council leaves the management of the hospital entirely to the trustees.

East Boston Ferry.

In view of the money devoted by the city to the hospital and the public library, which were not municipal necessities, as defined by municipal jurisprudence, it seems surprising that the East Boston ferry, though owned and operated by the city, should continue as a toll ferry. In old times the East-Boston ferry, when operated, was a part of the Chelsea ferry, which was in private hands. The first regular ferry to East Boston appears to have been established in 1833. In 1852 the East-Boston Ferry Company bought the ferry then in operation for $200,000, the city was to prescribe the duties of the company and the tolls, provided the latter netted eight per cent. on the capital invested, which might be $300,000. The act of incorporation held out the hope of a free ferry, to be established by the city. In 1870 the city bought the ferry property for $275,000, and the enabling act again held out the hope of a free ferry. In 1877 the city council voted to make the ferry free, but the Supreme Court of Massachusetts ruled such a vote to be illegal. Whether or not the city might have established a free ferry in

1870, under St. 1869, ch. 155, is undecided, although the presumption is against free ferries, as far as the science of jurisprudence is concerned. The question would be free from doubt, were East Boston another town or city; but it has been a part of Boston since 1637, and the right of the city to build a free bridge to East Boston is not to be doubted, provided authority from the General Court is obtained. The ferry has cost the Boston tax payers about $2,000,000. (See St. 1852, 244; 1868, 352; 1869, 155; Chief Justice Gray's decision in 123 Mass. Rep., 460). The ordinance of April 17, 1891, wisely transferred the management of the ferry from a board of commissioners or directors, appointed annually, to one superintendent. Another ferry, conducted by a railroad company, connects the city proper with East Boston.

Parks.

In 1870 the people of Boston voted upon an act (St. 1870, ch. 283) under which a board of nine park commissioners, four to be appointed by the State, should lay out one or more parks, the annual cost of maintenance not to exceed $50,000. Two-thirds of the voters were to accept the act to make it binding upon the city. The vote was 9,233 in favor, and 5,916 opposed; so the measure failed. After the annexations of 1874 another act, under which three park commissioners, appointed by the mayor and city council, were to establish parks within the city limits, was accepted by the light vote of 3,706 yeas, to 2,211 nays, a majority vote to decide. The act did not contain any limitations, except that expenses were to be kept within appropriations made by the city council. The park commissioners have never received a salary; yet the city has had good service. A fine system of parks has been projected, and is in part complete. Not including the common, the public garden, and the public squares, the parks cover nearly three square miles, and the cost, up to January 31, 1893, was about $11,500,000. The General Court and the city government have been equally lavish in this matter, and the city has received an equivalent for its great outlay. The city government has very little to do with the parks, beyond authorizing the loans and expenditures. But the common, the public garden, and other public grounds, to the extent of about 140 acres, with some thirty thousand trees, remain under the care of the city government and its superintendent of public grounds, an office established as early as 1841, and important since the public

garden has been made a delight to all comers. The parks and these public grounds might well be under one management.

Review of Executive Departments.

This ends the list of the great spending departments. Other departments created since the charter of 1854 are certain cemeteries; the inspection of milk and vinegar, which has proved a benefit; the commissioners of the Charles-river bridges; the inspection of buildings, which looks after the safety of all houses and other buildings in the city, and has had the benefit of very much legislation from the General Court, but has been useful; the inspection of provisions; the record commissioners, who have published important documents of the early local government; the city architect; and even an art commission. In 1870 the laying out and widening of streets was transferred from the aldermen to the board of three street commissioners, elected by the people; and in 1874 the registration of voters was transferred from the aldermen to a board of three registrars, appointed by the mayor and aldermen, who could not properly attend to such things. In 1871 a superintendent of printing was appointed, whose duties, however, are ministerial. In 1875 the collecting department was separated from the treasury. But, on the whole, the city government prefers not to multiply administrative departments, and in 1891 an interesting consolidation of the bridge, sewer, and sanitary-police departments with the street department was effected. Still there are some thirty-five coordinate departments directly amenable to the mayor, not counting the schools, the county officers, the police, and numerous officers paid by fees. The number of appointments made annually by the mayor and aldermen is nearly three thousand, and the number of persons in the service of the city about three times that number.

It is due to the city government to state that most of the city departments are created by the General Court. When a public want arises, and the General Court acts at all, it usually creates a new municipal department, as far as Boston is concerned; for some new duty of town officers in the nature of things means a new department in the city of Boston. In addition, the city has many wants that do not arise elsewhere. The result is an administrative machinery of vast extent and extremely complicated, but with this element of unity that the expense is assessed upon the Boston tax payers. County expenses are prescribed almost wholly by the General Court, and defrayed by the city.

For years past they have exceeded a million dollars annually. The school expense averages above two millions a year, and is appropriated by the city council in bulk, to be expended by the school committee. In the appointment of the police force, the city has no voice, but it bears the expense, which exceeds a million dollars a year. The expenditures of the departments under the control of the city government are mostly fixed charges. Yet nearly every administrative department, and nearly every expenditure, have been created at the request of the tax payers. They have demanded the best, and they have borne the cost with astonishing ease. With the exception of the nominal poll tax, the city collects nearly every tax it assesses; and the payments are prompt. Yet owing to the fact that the people of Boston demand more and receive more, their taxes are the highest in the country. Since the charter of 1854 our population has trebled; our tax has sextupled; yet the community bears the burden without apparent difficulty. But it dislikes special assessments. It prefers that the municipality shall do as much as possible, and that the cost shall be defrayed from the general tax levy.

Under the law of 1890 all subordinates hold their places during good behavior, and since the charter of 1854 the rule of annually appointing all heads of departments has been in part abandoned. A slight beginning has been made in reducing departments to divisions of a department, the advantage being, not economy, but better supervision, greater stability, and less contact with political appointments. For in an important sense appointments made by the mayor are more or less political appointments. Perhaps the administrative machinery of the city could be reduced to a few departments, the political heads of which might come and go with every mayor, while all division heads and their subordinates would serve during good behavior. The United-States Treasury shows that all financial departments of the city might be safely united under one head. Such a department of finance should include the assessors of taxes as bureau officers, and might include the registration of voters, because the assessing and collecting departments have the best knowledge of persons in the city. A great health department might include the city hospital, the inspection of food for man and beast, all cemeteries, and the entire registry of births, marriages and deaths. The public library, the publication of early records, and printing naturally go together, and have very much in common with our system of schools. The great departments of police, fire, in-

spection of buildings, weighers, and medical examiners could be joined. The departments of relief, correction and prisons should be consolidated. Finally there would be, or could be, a department of public works, comprising streets, sewers, bridges, parks, lighting, public buildings, the city engineer and surveyor, the architect, the water division, and the ferries, together with the board of survey, and all administrative work now assigned to the street commissioners.

It is not unreasonable that with a new mayor there should be six or eight, but not exceeding ten, new heads of departments. It is contrary to reason that such officers as the city architect, assessors of taxes, the engineer and surveyor, the water registrar, the superintendent of printing, or the city registrar should be quasi-political officers. An officer elected by the people, or appointed by the mayor and aldermen, is almost inevitably a political officer. When the people elect a new mayor, they practically declare that he may select all officers for whose conduct he is responsible. In order to eliminate party politics from the service, therefore, it is important that as few offices as possible should be elective, or subject to the pleasure of the appointing power, and that as many offices as possible, including all ministerial offices, should be taken out of party politics. It is important, also, that the administrative machinery of the municipal service be simplified. The administrative branch of a government should resemble a pyramid. To command popular interest, the system of administration must be intelligible. The laws that govern Boston are more complicated than the laws that govern the United States; our executive departments are more numerous; supervision is more difficult. The reason is apparent. We have but one national legislature; the city has three or four. There is but one national administration; the administrative officers of Boston carry into effect the Regulations of the Board of Aldermen, the Ordinances of the City Council, the statutes of the General Court, the laws of Congress, and the directions of the mayor. No wonder, the reformers despair when they undertake to deal with municipal government.

The Balance of Municipal Power.

This fact, that the spending officers of the city are the servants of so many masters, and that the supreme master, the voter and tax payer, is so exacting, is the chief reason why taxes in Boston are high, and why the municipality does many things that are elsewhere left to

private enterprise, and for that reason do not appear in the tax levy. The tax payer and the municipal government stand, to some extent, in the relation of principal and agent, or master and servant. Accordingly the municipal government cannot be judged justly without some attention to the public that clamors for improvements and is willing to pay the cost; though some persons demand generous expenses and low taxes. To reduce the general tax levy, the betterment law was passed in 1866 (St. 174). It was to let abutters bear a part of public improvements; but has not worked well. In theory common sewers were to be paid for by the abutting estates; but collections have been light. Even the parks were to be paid for, in part, by abutters; the object has not been obtained. When municipal expenses became enormous, under the joint influence of inflation, annexation, and the fire of 1872, the General Court limited municipal indebtedness by statute (St. 1875, ch. 209), ordaining that Massachusetts cities and towns should not owe above three per centum of their taxable property as valued by the assessors, though communities owing between two and three per centum of the assessed valuation might incur another one per centum of debt. The same law required sinking funds to be established.

Ten years later, the debts as well as the taxes of Boston were restricted by a law of Spartan rigor (St. 1885, ch. 178); but the General Court itself forced numerous exceptions upon the city. The net debt of the city in 1893 (gross funded debt, less cash available for redemption) is not far from four per cent. of the assessed valuation, and the amount required in 1892–3 for interest and sinking funds exceeded four million dollars. The city government is not alone responsible for this; neither is a stringent law a protection against lavish expenditures. Indeed the city government has been carefully protected. The city charters of 1821 and 1854 made members of the city council ineligible for salaried city offices. In 1884 members of the city council were made ineligible for such offices during the term for which they were elected. In 1850 they passed an ordinance making void all sales and contracts, purchases and agreements in which a member of the city council or an officer of the city had any private interest, direct or indirect (Ordin. of Dec. 23, 1850). The civil-service law (St. 1884, ch. 320, sec. 13) made it impossible for the members of the city council to charge wine or tobacco to the city, or more than a dollar a day for meals. The legislators appear to have felt that personal economy in members of the city government might promote municipal frugality. But a few

thousand dollars saved on municipal dinners or carriages are a small item in municipal expenditures that exceeded twenty-one million dollars in 1892–3. The real expenditures are demanded by the city government, by the General Court, and by the public, though it is customary to chide aldermen and common councilmen, when economy, retrenchment, and reform are in demand.

Up to 1885 the annual city councils controlled municipal expenditures, and are responsible for much that happened, though both the General Court and the public demanded much. Under a feeling that the city must be protected, as though it could not protect itself, the power of the city council, and especially the board of aldermen, was gradually curtailed. The establishment of the board of street commissioners, in 1870, is a good illustration. It transferred the right of laying out and widening streets from the aldermen to the street commissioners. Other executive departments were created at the expense of power which the charters of 1822 and 1854 had vested in the city council. The last favor shown by the General Court to the city council was in 1864, when the election of overseers of the poor was transferred from the people to the city council. The aldermen enjoyed the highest degree of power from 1847 to about 1876, and vast power up to 1885. But they gradually lost ground. Misled by a foolish charter they undertook too much; the result was inevitable distrust. In 1884 the law requiring the election of aldermen by districts was passed. It has not proved specially beneficial, nor at all injurious, for the reason that it cannot make any material difference whether an alderman is chosen by one-twelfth of the city or by the whole. The smaller States send at least as good men to Washington as do the large States, and a limited district is as apt to choose well as is a much larger district. But before the law of 1884 could produce results of importance, the storm that had gathered over the board of aldermen and its despised brethren of the common council, burst forth. It was to be a hurricane. The great wrong of the charters of 1822 and 1854 was to be redressed at last. The power of the aldermen was to be placed between the upper and the nether millstone.

The Balance of Power Recast.

In 1883 Benjamin F. Butler had been Governor of Massachusetts, to the sorrow of all conservatives in a State that thought well of the past. In 1884 and 1885, therefore, the General Court undertook to repair all

the mischief that had brought the political aspirant to the head of affairs for a twelvemonth. In those two years the constitution of Boston was revolutionised. Boston had supported Butler; in 1884 it had occasioned a tax rate of 17 per mille, against 14.50 in 1883. This led the tax payer to demand reform. In addition, the city was Democratic; the State was not; the General Court was overwhelmingly Republican. The time was favorable to radical measures. The civil-service law of 1884 destroyed the favorite patronage of the Boston city council, by placing the clerical and labor force of the city under the rules of the Commonwealth. The law made it illegal for members of the city council to recommend the appointment of policemen, firemen, laborers in the street or clerks in offices, on any political or personal ground. Most of the sections in this good law showed the temper of the General Court by beginning with the word "No." In 1885 the law limiting the debt and the tax of Boston was passed (ch. 178), leaving the city council no latitude in making appropriations, the tax available under the limit (nine per thousand of the average assessed valuation for current expenses, exclusive of the debt and the State tax) being imperatively required for the fixed expenditures of the city. Indeed, under the new law the appropriating power could only decide whether the reduction in the income of the city should reduce the outlay for paving, for sewers, for the salary of teachers or something similar. It was a cast-iron law; but cast iron is not as enduring as a watch-spring, nor so useful.

In 1885 (St. 323) the appointment of the police board was transferred from the city to the Commonwealth, and the famous act of May 27 (St. 266) drew the line between executive and legislative work of the city government, as prescribed in the Massachusetts declaration of rights, in the Constitution of the United States, and in the very phrases that school children use when they speak of their government. The act of 1885 repeated the language of the charters, and then vested all executive and administrative power of the city government in the mayor, to be exercised through the many executive and administrative departments which the past had brought forth. By a stroke of the pen, the executive power exercised by the city council, but especially by the aldermen, who would not concede equal rights to the common council, was transferred to the mayor. For more than sixty years he had been very little else than head alderman, or the presiding officer of the corporation; on June 26, 1885, when the new law took effect, he became

an officer of very great power. He was made the appointing power, though the board of aldermen was wisely given the power of confirmation; he might veto separate items in appropriation bills; he was made supreme in all administrative duties, the heads of departments being his servants, whom he could remove at pleasure, and the members of the city council expressly debarred from participation in the executive work of the city, such as the employment of labor, the making of contracts, the purchase of supplies, the repair of a sidewalk, the care of public property, or the expenditure of public money. Neither an alderderman, nor the whole city council, could issue binding orders or instructions to an administrative department, which thenceforth took its directions from the mayor alone.

Government by committee thus came to an end in Boston sooner than in the Commonwealth, and more radically than in the government of the United States. The General Court acted on the theory, carefully expressed in the Boston charters (St. 1821, ch. 110, sec. 30; 1854, ch. 448, sec. 62), that municipalities are the creatures of the State, and that the will of the General Court is the real charter of the proud city. Fortunately, the nature of things sets a limit to theories. In theory the General Court creates cities; in fact cities grow; and the best legislature can but recognise and try to regulate. In theory Boston was made a constitutional monarchy, with the General Court for its legislative branch; in fact the General Court cannot legislate for everything in Boston, because in the nature of things the General Court cannot be familiar with all the interests of the city government, and prudent men hesitate to regulate what they do not understand. In theory the mayor of Boston is the master of the many millions the household of the city requires; in fact he has less than his households wants. In theory he holds "the executive powers of the city" (St. 1885, ch. 266, ch. 6); in fact, many powers of a purely executive nature, as to schools, police, county affairs, parks, great public buildings, and even the erection of petty monuments, are past his control. But he is not the servant of the city council; neither can the city council act independently of the mayor. Indeed, real action and execution rest with the mayor; and his authority is derived from the General Court, rather than from the city council. Like so many of his appointees he executes statutes rather than ordinances, and he is not required to give an account of his stewardship to the powers that have created his prerogative.

As neither jurisprudence nor political philosophy has drawn the exact line between executive and legislative functions, the city council of Boston should not be censured for neither understanding nor admiring the law of 1885. Surveyors of highways appear to be executive officers; the law of 1885 vests the executive powers of the surveyors in the mayor, and appears to leave their legislative power in the board of aldermen. But what is the power of a surveyor of highways that is not executive? A similar question applies to the whole charter amendment of 1885. The charter of 1822 had vested in the city "the administration of all the fiscal, prudential, and municipal concerns of said city, with the conduct and government thereof" (sec. 1). In 1885 the administration was clearly transferred to the mayor; what, then, was left to the city council? The inaugural message of Mayor Matthews, in 1892, gives this answer: "The chief function of the city council, as the legislative branch of the city government, is to determine the amounts of money which the executive departments shall be authorized to expend during the year, and the manner in which the money shall be raised." That is, under sharp limitations the city council has a voice as to appropriations and loans (for since 1885 the tax always goes up to the limit then prescribed). No doubt, the city council has other powers; but it has not yet recovered from the hurricane of 1885. Nor is this strange. Chapter 266 of 1885 destroyed the traditions that began with Boston itself; it destroyed the belief that towns were the true model for city government; it destroyed the very theory of municipal government on which all New England was brought up. For after all had been said about the General Court being a creator of municipal government, the fact remained that towns had some rights, that they were the organs and the constituents of the Commonwealth, and that the town delegates of 1779 had made the Constitution of the State. The city council suddenly found itself deprived of the only power it valued, and that was the administrative power of the charter. The legislative power the city council knew to be slight. Hence its sorrow, unrelieved by public pity. But since 1888 the aldermen receive an annual salary of $1,500 each; the common councilmen do not.

Conclusion.

After two centuries of town government, the power of which was felt by the British crown, and after more than sixty years under a city charter that was thought to preserve what was best in town govern-

ment,—for the charter of 1854 was merely an amplification of the first charter,—the city of Boston has virtually a government in which the powers are divided as the theories of Locke and Montesquieu, of John Adams and Alexander Hamilton require. The city has an executive head with ample powers. The judiciary, of course, is reserved to the Commonwealth, because the judicial power cannot be municipal, and for that reason should not be vested in a municipal government. The legislative power is nominally vested in the city council; in fact it is chiefly exercised by the General Court, in a long and bewildering set of general and special laws. Where the General Court has left the requisite power, the city council may act. But the General Court does not acknowledge any inherent or natural rights of the great corporation which we call the city of Boston. Jurisprudence sustains the position of the General Court. History teaches a different lesson. It shows clearly and impressively that there is a line to be drawn between municipal and State interests, and that municipal concerns should be left to the municipalities that pay the cost, and must share in their honor or their shame. The political history of all great states shows also that free municipalities, free to flourish, and free to suffer, are the nursery of citizens and statesmen fit to govern a free Commonwealth and a free people.

CHRONOLOGY OF THE BOSTON GOVERNMENT.

1628–9, March 4–14.—Massachusetts Colony charter.
1630, Sept. 7–17.—"Trimontaine shalbe called Boston."
" –1634.—Earliest officers appointed: Constables, watchmen, surveyors of highways(?)
" —Municipal and calendar years begin in March.
1634.—Breed's and Long islands annexed to Boston.
" —Wharfinger chosen.
1635–6, March 3.—Quarter courts established.
" " —General charter of towns.
1636, Aug. 15.—Water bailiffs chosen (shore police).
" Nov. 15.—Hogreeve chosen.
1636–7, March 9–19.—East Boston annexed.
1641.—Town recorder (called town clerk in 1692–3, under 1 Prov. L., 65).
" —Town treasurer.
1643.—Selectmen first called by that name in the town records.

1645.—First annual election of selectmen.
1647–8.—Sealers of leather chosen.
1649–50.—Clerks of the market chosen.
1650.—Sealer of weights and measures appointed.
1652–3.—Packer of flesh and fish chosen.
1655.—Corders of wood chosen.
" —General Court authorizes appointment of sworn measurers of corn, wood, and boards.
1659.—Moderator for town meeting.
1660.—Almshouse ordered by town. Built north of Common.
" —Fence viewers authorized by Massachusetts code.
1663–4.—Cullers of fish chosen; also, of staves.
1665–6.—Measurer of salt chosen.
1667–8.—Scavengers chosen.
1677.—Tithingmen to be appointed (police).
1690–1, March 9.—Overseers of poor chosen.
1691, October 7.—Massachusetts Province charter.
1692, November 16.—General town charter from the Province.
1694.—Assessors first chosen.
1699–1781.—Superior Court of Judicature.
" –1782.—Province Court of Common Pleas.
" –1822.—Court of sessions.
1705.—Brookline set off from Boston.
1710.—Appointment of hay weighers required.
1711.—Appointment of firewards authorized.
1712, February 1.—Firewards appointed.
1713 and 1715.—First division of town into eight wards.
1718.—Quarantine transferred to selectmen. Hospital at Spectacle island.
1723–1857 (?)—Assay masters (for distilleries).
1734–5–1850.—Surveyor of hemp and flax.
1735.—Establishment of twelve wards.
1737–1849.—Quarantine hospital at Rainsford island.
1738.—Hay weigher appointed.
1739.—Hay scales built at South End.
" —Chelsea set off.
1742, December 27.—First town meeting in Faneuil Hall.
1745–1824.—Firewards elected by the people.
1762–1775.—Wardens (Sunday police).

1764.—Deer reeves (to enforce close season).
1772.—Overseers of the poor incorporated.
" —Lamp department authorized.
1776, March 5.—Boston town meeting at Watertown.
" July 4.—Declaration of Independence.
1780.—Massachusetts State Constitution.
1781.—Superior Court of Judicature changed to Supreme Judicial Court of the Commonwealth.
1782–1821.—Court of Common Pleas (not for Suffolk County 1814–21).
1786, March 23.—General State charter for towns.
" June 17.—Charles-river bridge dedicated.
" —Inspectors of the police authorized by town code. Four police officers appointed.
1789, October 20.—First School Committee chosen. School Committee of 21 members 1789–1835.
" —Constitution of the United States.
1793.—Norfolk county set off from Suffolk.
" November 23.—West-Boston bridge dedicated.
1799–1821.—Board of health, chosen in wards.
" —Quarantine transferred from selectmen to board of health. Port physician (or resident physician) appointed.
" —Ward clerks first chosen.
1800–1859.—Municipal court (with jury).
" —Town attorney.
1801.—Inspection of lighters, or boats carrying stone and gravel.
1802.—Almshouse, including bridewell and workhouse, removed to Leverett street.
" —Assistant assessors first chosen, in wards.
1804.—South Boston annexed.
1806.—Second establishment of twelve wards (see 1735 and 1822).
1810.—Inspectors of stone lime.
1814–21.—Town court for summary trial of petty causes.
" " —Boston Court of Common Pleas.
1816.—Weighers of beef.
1818–1855.—Primary-school committee.
1821–59.—Massachusetts Court of Common Pleas.
1822, February 23.—The city charter signed.
" —Third division into twelve wards (see 1806 and 1838).
" April 8.—First city election.

1822, May 1.—Inauguration of the city government: Mayor, eight aldermen, forty-eight common councilmen.
" May 1.—The city assumes county rights and duties.
" —Wardens, to preside at ward meetings. City elections to be held on second Monday in April.
" —Police court established. Court of sessions abolished.
" –1875.—Office of the city and county treasurer and collector united.
1823–25.—Fiscal years end on May 31.
" –51.—Jail in Leverett street.
" –28.—Josiah Quincy mayor.
" —House of industry at South Boston; occupied in 1825.
" —City marshal appointed (chief of police).
" July 31.—Mayor Quincy recommends the extension of Faneuil Hall Market.
1824.—House of correction, nine directors.
" —Board of health superseded by city government.
" –49.—Superintendent of burial grounds.
" August 2.—Office of auditor established.
1825.—House of reformation at South Boston, nine directors.
" —City elections to be held on second Monday in December.
" May 23.—Office of superintendent of streets established.
1826.—Municipal year begins on first Monday in January.
" —Firewards abolished. Chief engineer of fire department.
" –1891.—Fiscal years begin on May 1.
1827.—City solicitor.
" Quincy market dedicated.
" –1870.—Committee for the reduction of the city debt.
1828, November 3.—First superintendent of bridge.
1830, September 17.—Old State House occupied as City Hall.
1831.—Property of Suffolk County vested in Boston.
1833.—Surveyor-general of lumber.
1834–1880.—Superintendent of public lands.
1835.—Railroads to Providence, Worcester, and Lowell completed.
1836–1854.—School Committee of twenty-six members.
1837–1839.—Mayor Eliot in office.
" –1891.—Superintendent of sewers.
" –1848.—Superintendent of alien passengers.

1838.—Appointment of Boston police officers authorized by General Court.
" —Fourth division of Boston into twelve wards (see 1822 and 1850).
1839–1844.—City attorney.
1839.—Lunatic-hospital established.
1840.—Superintendent of public buildings.
" July 19.—Arrival of the first Cunard S.S., the "Britannia."
1841.—Superintendent of Common (see 1870).
" —Railroad to Albany completed.
" —Measurer of upper leather.
" —County Court House, School street, changed to City Hall.
1844–5.—Eight trials to elect Thomas A. Davis mayor.
1847.—Mayor and aldermen authorized to make penal orders.
" —Harbor master.
" —Inspector of hay.
1848, October 25.—Introduction of Cochituate water celebrated.
1849.—Registry department.
" —City physician.
" —Coal weighers.
" –1866.—Quarantine hospital at Deer Island.
" —Cochituate water board and water registrar (see 1876).
1850.—City engineer.
" —Truant officers.
" —Second assistant assessors.
" —Fifth division into twelve wards (see 1838 and 1865).
1851.—Surveyor of marble.
" —Superintendent of schools.
" —Jail in Charles street.
" —Electric fire alarm introduced.
" —Railroad to Montreal completed.
1852.—Library department.
" —Superintendent of markets.
" —City messenger department.
1853–1891.—Superintendent of health (of street cleaning or sanitary police).
1854.—Plurality to decide in municipal elections,
" —Roxbury police court established.
" —Police and watch departments united.

1854.—Amended city charter. Mayor receives veto power. Number of aldermen increased from eight to twelve.
1855.—Chelsea police court established.
" –1856.—County physician.
" –1859.—Superior Court for Suffolk county.
" –1875.—School committee of seventy-four members.
" —Half the cost of new sidewalks borne by the city.
1856.—Clerks of the Supreme and Superior Courts, district attorney, sheriff, register of probate, and commissioners of insolvency elected by the county voters.
1857.—Five trustees of Mount-Hope cemetery.
" —Reformatory and charitable institutions at South Boston and Deer island united under twelve directors.
1858.—Clerk of committees.
1859.—Superior Court established.
" —Inspector of milk.
1862.—Hospital department.
" —Charlestown police court established.
1863–1865.—City offices at Mechanic building, Bedford and Chauncy streets.
" —Weighers of boilers and heavy machinery.
1865.—Sixth division of Boston into twelve wards (see 1850 and 1876).
" —September 17.—New City Hall in School street dedicated.
1866.—Municipal Court established; police court abolished.
" —Betterment law passed.
" —Quarantine hospital at Gallop's island.
1868.—Roxbury annexed.
" —Surveying department.
1869.—Inspection of petroleum.
1870.—Dorchester annexed. Municipal court of Dorchester district.
" —Board of street commissioners.
" —Ferry department.
" —Superintendent of Common and public grounds (see 1841).
" —Department of sinking funds.
" –1887.—Cedar-Grove cemetery.
1871.—Inspector of buildings.
" —Commissioners of Charles bridges.
" —Superintendent of printing.
1872.—Board of health.

1872.—City elections held on Tuesday after second Monday in December.
" —Inspector of provisions.
1873.—Board of fire commissioners.
" —Appointment of truant officers by School Committee.
1874.—Charlestown, West Roxbury, and Brighton annexed.
" —Municipal (district) courts established at East Boston, South Boston, West Roxbury, and Brighton.
" —Board of registrars of voters.
" –75.—(Fiscal year). The city received $12,176,436.08 in taxes.
1875–1878.—Liquor license commissioners.
" –1892.—Department of record commissioners.
" —Municipal debt limited by law to 3 p. c. of property taxed.
" —A new charter proposed by Mayor Pierce's commission.
" —School Committee reorganized. Supervisors.
" —Three common councilmen elected from each ward.
" —Collecting department.
" —Park department.
" —City architect.
1876.—Boston water board, in place of Cochituate and Mystic water boards.
" –1893.—Boston has twenty-five wards, unchanged.
" –1885.—School Committee of twenty-five members.
1878.—Precincts established for voting purposes.
" —Probation officers.
" –1885.—Police commissioners, appointed by the city.
1879.—Women receive the right to vote for School Committee.
1880.—Inspector of vinegar.
1881.—Corporation counsel.
1884.—Civil-service law for State and cities.
" –1892.—Aldermen elected by districts.
" —Mayor Martin's commission recommends charter amendments; three reports.
1885.—Boston board of police, appointed by the State.
" —Charter powers recast; city council deprived of executive functions; mayor's power increased. School Committee of twenty-four members.
" —Debt and tax limit for Boston.
1886–1891.—General superintendent of bridges.

1886.—Fire marshal, appointed by the State.
1888.—Weigher of salt water fish.
1890-1891.—Inspector of wires.
1890.—Art commission.
1891.—Board of Survey.
" —Superintendent of ferries replaces commissioners.
" —Sewer, bridge and sanitary police departments placed under superintendent of streets.
" April 30.—Net debt of city $31,342,638.47.
1892.—Fiscal year begins on February 1.
" —Common council has seventy-five members, three from each ward.
" -93 (fiscal year).—Municipal expenditures, $21,300,665.04.